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NEGOTIABLE INSTRUMENTS

Prepared for the American Institute of Banking

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NEGOTIABLE INSTRUMENTS

CHAPTER I

Introduction to a Study of the Negotiable Instruments Law

THE LAW OF NEGOTIABLE INSTRUMENTS has been codified in most States by a statute known as the Negotiable Instruments Law. Prior to the enactment of this statute, and still in the few jurisdictions of the United States where the Negotiable Instruments Law has not been passed, the law governing bills, notes and checks, is based on the Common Law; that is, on a series of rules gradually built up during the past centuries in England and the United States from the decisions of courts on various questions as they arose from time to time. Even in jurisdictions where the Negotiable Instruments Law has been enacted the common law is still important in determining controversies on negotiable instruments. It is important in the first place as aiding the interpretation of the language of the Negotiable Instruments Law. Unless that language clearly requires a different construction, courts presume that the statute restates the rule of the common law which existed prior to the enactment of the statute. In the second

place, the common law is still important because cases not infrequently arise which are not clearly covered by the statute, and section 196 of the statute enacts that cases not provided for in the statute shall be governed by the unwritten law previously existing. That portion of the common law which relates to negotiable instruments and to certain other mercantile transactions is frequently called the "Law Merchant."

2. THE NEGOTIABLE INSTRUMENTS ACT.—The Negotiable Instruments Law is based upon an earlier English statute, called the "Bills of Exchange Act," which codified the law of England governing negotiable instruments, and was enacted in 1882. As the Common Law of England upon this subject was in the main like that of the United States, the English statute furnished great aid in codifying the American law. Most of the States of America have appointed commissioners to promote uniformity in the laws of the several States. These commissioners meet annually in conference and in 1895 undertook the draft of the American Negotiable Instruments Law. The following year the draft was discussed by the Conference and recommended for adoption by the several States. The law thus drafted has been adopted in most of the United States. The following list shows the States and territories in which the law has been adopted, with the date of enactment, and also the States and territories that have not yet adopted such law:

District of Columbia (1899)	Montana (1903)
Florida (1897)	Nebraska (1905)
Georgia (not enacted)	Nevada (not enacted)
Hawaii (1907)	New Hampshire (not enacted)
Idaho (1903)	New Jersey (1902)
Illinois (1907)	New Mexico (1907)
Indiana (1913)	New York (1897)
Iowa (1912)	North Carolina (1899)
Kansas (1905)	North Dakota (1899)
Kentucky (1904)	Ohio (1902)
Louisiana (1904)	Oklahoma (not enacted)
Maine (not enacted)	Oregon (1899)
Maryland (1898)	Pennsylvania (1901)
Massachusetts (1898)	Porto Rico (not enacted)
Michigan (1905)	Rhode Island (1899)
Minnesota (1913)	South Carolina (1914)
Mississippi (not enacted)	South Dakota (1913)
Missouri (1905)	Tennessee (1899)
Alabama (1907)	Texas (not enacted)
Alaska (1913)	Utah (1899)
Arizona (1901)	Vermont (1913)
Arkansas (1913)	Virginia (1897)
California (not enacted)	Washington (1899)
Colorado (1897)	West Virginia (1907)
Connecticut (1897)	Wisconsin (1899)
Delaware (not enacted)	Wyoming (1905)

3. AMENDMENTS AND VARIATIONS.—In a few States the Negotiable Instruments Law has been somewhat amended. All important amendments are indicated by notes following the several sections of the Act. Unfortunately in the statute as passed in the several States the section numbering adopted by the Commissioners of Uniform Laws has not always been followed. The references in this book are to the numbers adopted by these commissioners. Those States that have adopted different section numbering are indicated by a table of

cross references at the end of the book. As the Negotiable Instruments Law, even in the few passages where its terms are not wholly clear or satisfactory, is the ultimate authority on the subject, it is necessary to be familiar with its language and arrangement. Each section of the Act should be read carefully and the comment and illustrations following the sections will make the meaning and application plainer. But before the Act is studied, a few fundamental principles in regard to negotiable instruments should be understood.

4. A NEGOTIABLE INSTRUMENT IS A CONTRACT OR A SET OF CONTRACTS.—A negotiable instrument is a contract or a collection of contracts. An unindorsed promissory note is a single contract—a contract of the maker with the payee. So an unaccepted and unindorsed check or bill of exchange is simply a contract of the drawer with the payee. When these instruments are endorsed, or when a bill of exchange is accepted, an additional contract is created. The study of the law governing negotiable instruments aims to acquire a knowledge of the terms and legal effect of the various obligations which may thus arise on negotiable paper.

5. THE CONTRACTS ON NEGOTIABLE INSTRUMENTS ARE FORMAL CONTRACTS.—To understand the law of negotiable instruments some elementary knowledge of the law of contracts is desirable. Contracts may be divided into simple

contracts and formal contracts. Simple contracts owe their validity to mutual assent of the parties, to the terms of a promise, or set of promises for which the promisee gives consideration. The typical formal contract of English and American law has been the contract under seal which was enforceable though no consideration was paid for it. For a detailed statement of what this implies, reference must be made to the volume dealing with business law generally. Formal contracts depend for their validity on the form in which they are made. The contracts on negotiable instruments partake of the nature of simple contracts in requiring consideration for their validity but they also partake of the nature of formal contracts. No instrument and no contract on an instrument which does not comply with certain rules as to form is negotiable. Moreover, the instrument itself is regarded as the obligation, not simply as evidence of it.

6. THE TERMS OF THE CONTRACTS ON NEGOTIABLE INSTRUMENTS ARE LARGELY IMPLIED.—In an ordinary written contract the parties write out fully the terms of their agreement, but where the customs of business lead men to enter constantly into contracts of the same sort, abbreviated statements of the terms of their contracts are likely to be employed. Thirty days, for instance, may be used in a contract for the sale of goods to mean that the price of goods sold is not due for thirty days, and a variety of illustrations

might easily be given of abbreviated mercantile memoranda in contracts. So in bills of exchange and promissory notes—the terms of the contract are not fully expressed. The contract between the maker and payee of a promissory note is indeed stated with some fullness, but the contract of a drawer of a bill of exchange or of a check is not stated. In form such a document is merely an order on another to pay a certain sum of money, but by mercantile custom it is also in legal effect an abbreviated promise that “If the drawee fails to pay on demand at maturity, and I am promptly notified of his failure, I will pay.” The contract of an endorser is similarly to be understood from mercantile custom not because of express language used. It is possible to write on negotiable instruments contracts other than those made negotiable by custom of merchants. Thus a guaranty may be written on a bill or note, but its effect must be judged as a simple contract, as if it were on a separate paper.

7. WHAT IS MEANT BY NEGOTIABLE.—Contracts in our law may generally be assigned so that the assignee stands in the same position as the assignor. This is not true of all contracts, but it is the general rule. It would be true of any promise to pay money, even though it were not negotiable. What then is the importance of an instrument being negotiable? It is mainly this: that the negotiation of a negotiable instrument to a holder in due course does not merely give the holder the rights

of the original promisee, it gives him those rights free from any personal or equitable defence which might defeat them; or, as it is often briefly put, negotiation cuts off equities. This requires a brief definition of what is meant by an equity, an equitable defence, or a personal defence, for all these terms mean the same thing.

8. ABSOLUTE AND PERSONAL DEFENCES.—The law distinguishes between a situation where there is only apparently but not really a negotiable obligation, and a case where there is an actual negotiable obligation but for some reason in justice it should not be enforced. If the signature of a maker to a negotiable instrument is forged, though he has apparently entered into a negotiable obligation, in fact he has not. If, however, he has been induced by fraudulent misstatements to sign such an instrument, he has actually entered into a negotiable obligation, though it is unjust to enforce it in favor of the fraudulent payee. On the forged note nobody could recover against the apparent maker. On the fraudulent note the payee could not recover, but a holder in due course could. It may then be said that forgery is an absolute or real defence while such fraud as that given in the illustration is a personal or equitable defence, or, briefly, an equity. No equitable defence is available against a holder in due course. That is, one who has paid value for the instrument before maturity in good faith without notice of the defence.

This distinction between absolute or real defences on the one hand and personal defences or equities on the other hand, is fundamental in the law of negotiable instruments, and it is essential to remember which defences fall under these headings.

9. WHAT ARE REAL AND WHAT ARE PERSONAL DEFENCES.—The following defences to an obligation are absolute or real:

First—The lack of genuineness of the signature. This may be due to forgery or it may be due to lack of authority on the part of an agent who made the signature on behalf of another.

Second—Fraud of some kinds.

Third—Lack of title, as where a holder claims through a forged endorsement.

Fourth—Bankruptcy of the holder.

Fifth—Material alteration of the instrument.

Sixth—Legal incapacity as of a minor, an insane person, and in some jurisdictions—as to some matters—a married woman.

Seventh—Illegality of certain kinds.

Eighth—The legal discharge of the instrument or the obligation in question.

The following are personal defences, or equities only, and are not available against a holder in due course:

First—Illegality of certain kinds.

Second—Fraud generally.

Third—Duress.

Fourth—Lack of delivery of the instrument.

Fifth—Lack of consideration.

Sixth—Failure of consideration.

Seventh—Discharge of the instrument before maturity.

Eighth—A surety is discharged by certain dealings with his principal which are prejudicial to him.

Ninth—Set-off.

The meaning of these various defences will not be understood without the explanation of them hereafter given, but a list of them seems desirable in this place as a summary.

There may be a defence to one obligation on a negotiable instrument and no defence to another. Sometimes all the obligations on an instrument are subject to the same defence, as where the instrument is materially altered after all the signatures have been put upon it. Sometimes there may be a defence of one kind to one obligation on the instrument, and a defence of another kind to another obligation. The obligation of each person whose name appears on the instrument frequently must be considered separately.

10. WHAT A STUDY OF THE NEGOTIABLE INSTRUMENTS LAW INCLUDES—The chief provisions of the Negotiable Instruments Law may be classified under the following headings:

First—What is essential for the formation of a negotiable instrument or for a negotiable obligation on such an instrument?

Second—What is the full meaning of each con-

tract which is briefly stated on such an instrument. That is, what does a maker, drawer, acceptor, endorser in legal effect promise to do?

Third—What are the absolute and what the personal defences which may excuse a promisor from performing his promise?

Fourth—Who is a holder in due course, and therefore not subject to personal defences or equities?

With this introduction we may take up the examination of the language of the act, with appropriate explanation and illustration, of the several sections. The meaning of some is plain enough without comment. Others, though perhaps plain to a lawyer, assume a general knowledge of law and legal phraseology which one who is not a lawyer cannot be expected to possess.

CHAPTER II

Title I of the Negotiable Instruments Law

NEGOTIABLE INSTRUMENTS IN GENERAL

Article I—Form and Interpretation

12. SECTION 1.—[FORM OF NEGOTIABLE INSTRUMENT].—An instrument to be negotiable must conform to the following requirements: (1) It must be in writing and signed by the maker or drawer; (2) Must contain an unconditional promise or order to pay a sum certain in money; (3) Must be payable on demand, or at a fixed or determinable future time; (4) Must be payable to order or to bearer, and (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

NOTE.—In the Wisconsin Act the following is added: "But no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by an officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable, shall, or shall be deemed to be negotiable, according to the custom of merchants, in whatever form they may be drawn or made. Warehouse receipts, bills of lading and railroad receipts upon the face of which the words 'not negotiable' shall not be plainly written, printed or stamped, shall be negotiable as provided in section 1676 of the Wisconsin Statutes of 1878, and in sections 4194 and 4425 of these statutes, as the same have been construed by the Supreme Court."

13. THE INSTRUMENT MUST BE WRITTEN AND SIGNED AND MAY BE SEALED.—

The first section of the statute states briefly the requisites of a negotiable instrument. The following sections elaborate some of the requirements here enumerated. Let us run over these. "It must be in writing and signed by the maker or drawer." That is simple. It may be written in pencil so far as its legal validity is concerned, and the substance upon which it must be written makes no difference, but it must be written and signed. "Signed" does not necessarily mean subscribed at the end of the paper, though that is the usual and proper method of signing. "John Smith promises to pay one hundred dollars to Thomas Brown or order" is a promissory note if the name of John Smith was written by him with intent to authenticate the instrument.

14. THE INSTRUMENT MUST CONTAIN AN UNCONDITIONAL ORDER OR PROMISE.—

The second requisite is, "It must contain an unconditional promise or order to pay a sum certain in money." That is not so simple. The words "unconditional promise" refer to promissory notes; the requirement of an unconditional order relates to bills of exchange or checks. Suppose a draft in this form: an order on the drawee to pay a specified sum on a fixed day adding "charge the same to the \$1,800 account." Is that unconditional? Yes, but compare with it the same case slightly changed: an order to pay on a fixed day "out of the \$1,800 due

me.” That last form is not an unconditional order because by its terms the order depends on there being \$1,800 due the drawer. If there is nothing due him, nothing would be payable under the terms of the order. But in the instrument as we stated it at first there was an order to pay and then a request to charge to a special account. (See Section 3.) There is one form of instrument which under the statute is an unconditional order though it might not seem to be. Making an instrument payable at a bank is an order on the bank to pay the instrument, and makes it in effect a bill of exchange drawn on the bank. (Section 87.)

15. ASSIGNMENT OF CLAIM IS NOT A BILL OF EXCHANGE.—Sometimes we see an instrument in the form of an assignment by a creditor of a claim which he has against a debtor accompanied by an order to pay the claim so assigned to a certain payee or assignee. That is not a bill of exchange, even though the words “order” or “bearer” are inserted, because it is an assignment of a particular claim. If the claim is not good then the drawer does not demand payment; he only demands payment of the claim which he has against the drawee. The order is therefore conditional on his having a claim. On the other hand, if the order is unconditional it is immaterial, so far as the negotiability of the draft is concerned, that the drawer has no valid claim against the drawee and no right to draw on him. A check on a bank where the

drawer has no funds is as much a negotiable instrument as if he had funds, because the drawer does make an unconditional demand or order upon the bank. The promise in a note must be as unconditional as the order in a draft. It will not do to say, "I promise to pay the money in a certain event, or unless a certain event happens."

16. A NEGOTIABLE INSTRUMENT MUST BE FOR A SUM CERTAIN IN MONEY.—Another requirement of negotiability stated in subsection 2 is that the instrument must be for "a sum certain in money." That involves a consideration both of what is money and what is a sum certain. What is meant by a sum certain is partly defined in section 6, subsection 5, to which reference is made. The meaning of money as used in the law is ordinarily legal tender and except so far as section 6 modifies this rule of the Common Law, a negotiable instrument must be payable in legal tender. It will in effect be so payable if the instrument simply promises a stated sum of money, without stating in what medium the sum is to be paid; but a promise to pay in bank notes is not a promise to pay legal tender. Whether an instrument so payable may be negotiable is discussed under section 6.

17. THE INSTRUMENT MUST BE CERTAIN IN TIME OF MATURITY.—The third subsection provides that the instrument "must be payable on demand or at a fixed or determinable future time." Generally, instruments are payable

either at a fixed time or on demand, but sometimes bills of exchange are payable a fixed number of days after sight. When such a bill will become due is not fixed when the instrument is issued, but it can be fixed by presenting the instrument and starting the days to run. You cannot tell when you look at the instrument just how soon it will be due, but the holder can make it become due within the given number of days after sight by formally presenting the instrument. The time is therefore determinable. Section 4 of the Law further defines what is meant in section 1 by "a fixed or determinable future time."

18. WORDS OF NEGOTIABILITY ARE NECESSARY.—Subsection 4 provides that the instrument "must be payable to order or to bearer." It does not matter whether the instrument reads "to the order of A" or "to A or order." Legally those mean the same thing. It may be to the order of two or more jointly or to the order of any one or more of several. It may be to the order of the holder of an office for the time being (Section 8). It does not matter whether it is simply "to bearer" or whether it is to "A or bearer." The definition of an instrument payable to bearer is further enlarged by section 9. To illustrate what has been said, that the obligations of the different parties to a negotiable instrument are separate contracts, we may suppose the case of a note, non-negotiable because of the omission of the words "order" or "bearer"

but indorsed by the payee in terms "to the order of" an indorser. The payee's indorsement is a negotiable contract, though the contract of the maker of the note is not.

19. THE DRAWEE MUST BE INDICATED.—Finally the last subsection of section 1 provides that the instrument, if a bill of exchange, must be addressed to a drawee indicated with reasonable certainty. But it may be addressed to two or more persons as joint drawees. (Section 128.) If the drawer and drawee of a bill are the same person, the instrument is in legal effect a promissory note and may be treated either as a bill or note. (Section 130.) There may also be in a bill a kind of subsidiary drawee, called a referee in case of need. If the drawee does not pay, the holder of the bill may call upon this referee. (Section 131.)

20. SECTION 2.—[CERTAINTY AS TO SUM; WHAT CONSTITUTES.] The sum payable is a sum certain within the meaning of this act, although it is to be paid: (1) With interest; or (2) By stated instalments; or (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or (4) With exchange, whether at a fixed rate or at the current rate; or (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

NOTE.—In the Acts of Idaho, Iowa and North Carolina, the words, "Or of interest" are omitted from Subsection (3). In Nebraska, North Carolina and South Dakota, there are provisions that nothing in the Act shall be construed as authorizing the enforcement of a stipulation for attorney's fees.

21. WHAT IS A SUM CERTAIN.—We have considered what is meant by money. What is meant by a “sum certain” is defined in section 2 to some extent. The first two subsections state what would without any statute have been obvious. As the rate of interest is fixed by the instrument the exact sum which will be due at maturity can be calculated by any one at any time. And the sum is equally definitely fixed though payable in instalments. The third subsection is not quite so clear. It may be thought that if such an instrument is open to any objection, it is rather open to the objection that it is not payable at a fixed time, (for, as we shall see, that also is one of the requisites of negotiability), than to uncertainty of the amount. But a change in time of maturity will also involve a change in the amount due at maturity. However, the statute solves our difficulty. The sum is certain within the meaning of the statute though the instrument is payable with exchange, either at a fixed rate or at the current rate. It is certain though payable with the cost of collection, or with an attorney’s fee if payment is not made at maturity. In these cases the sum is not really certain, but the net recovery which the holder will realize is certain, and that has been thought sufficient; but a provision in a note that it shall be subject to the payment of an attorney’s fee when the note is unpaid and placed in the hands of an attorney for collection, whether the note is then due or not, is not within the protection

of the statute and would not be negotiable, since the sum is made uncertain.

22. ATTORNEY'S FEES.—The provisions of the statute in regard to attorney's fees has not altogether set at rest, however, a conflict of authority which existed prior to the passage of the Negotiable Instruments Law. Before the passage of that statute four views were taken by different courts: (1) that the contract for attorney's fees was valid and the instrument was negotiable; (2) that the provision was a valid simple contract between the parties but destroyed negotiability of the instrument; (3) that the provision was void and contrary to public policy, but being void did not affect negotiability; (4) that the usury laws prevented any fee which would make the total charge over and above the face of the note exceed the highest rate of interest allowed by the statute. The Negotiable Instruments Law makes it clear, where it is enacted, that the provision does not destroy negotiability, but whether the effect of the statute by implication is to make valid a provision which previously was void has been the subject of conflicting decisions. In Ohio and West Virginia, the Supreme Courts have held that the provision is void, though the note is negotiable. A contrary view has been taken by the Supreme Courts of Colorado and Virginia, that is that the provision is valid and the note negotiable. In Nebraska, North Carolina and South Dakota, the statute itself contains provisions that the act shall

not be construed as making valid a stipulation for attorney's fees.

23. SECTION 3.—[WHEN PROMISE IS UNCONDITIONAL.] An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with: (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or (2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

24. INDICATION OF A PARTICULAR FUND IS UNOBJECTIONABLE.—We have seen that a promise or order to pay which is dependent on the existence or sufficiency of a fund or credit cannot be negotiable, but a statement of the fund or account to which the payment is to be charged is not objectionable for the sum is to be paid irrespective of whether the fund or credit is sufficient to meet the charge.

25. STATEMENT OF THE TRANSACTION GIVING RISE TO THE INSTRUMENT.—One matter in regard to the unconditional quality of the promise required in a note may be worth mentioning. It is provided in section 3 (2) that it does not make an instrument non-negotiable if it contains a statement of the transaction which gave rise to the instrument. Suppose this case: a note in ordinary form adds these words, "This note was given for a horse, the title to which is to remain in the seller

until this note is paid." The Massachusetts court and some other courts held, before the passage of the Negotiable Instruments Law, that that note was not negotiable, on the ground that if the horse should die the maker of the note would not have to pay it, since there would be what is called "failure of consideration," for the note when the horse for which it was given died, and any purchaser of the note would have notice from its terms of this possibility. Other courts held that the buyer of a horse under those circumstances would have to pay the price even though the horse died. The Massachusetts court under its view held such a note non-negotiable, since in effect it was conditional; the other courts held it was unconditional and negotiable, and it looks as if the same controversy might arise under the present act. There certainly is no harm in stating the transaction which gave rise to the instrument if nothing further is added, that is, it will do to say, "This note was given for a horse," or, "This note was given for a ditch," but probably it would not do to add to a note, "This note was given for a horse and is not to be paid if the horse dies," nor, "This note is given for a ditch to be dug and is not to be paid unless the ditch is dug," for when you add those last words you do indicate that there is a condition to the promise of the maker and that he is not to pay in every event. Now if that condition is implied it must be just as bad as if it is expressly stated. Suppose the addition, "This note is given

for a ditch to be dug.” Does that carry with it the implication that unless the ditch is dug the maker is not going to pay? It certainly suggests that implication, and if so, it would seem that the note was conditional and not, therefore, a negotiable instrument. It is, of course, not necessary that an instrument should state the transaction which gave rise to it, or even that it was given for value [Section 6 (2)].

26. SECTION 4.—[DETERMINABLE FUTURE TIME; WHAT CONSTITUTES.] An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable: (1) At a fixed period after date or sight; or (2) On or before a fixed or determinable future time specified therein; or (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect.

NOTE.—In the Wisconsin Act instead of the last paragraph, the following is inserted: “(4) At a fixed period after the date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided.”

27. CERTAINTY OF TIME OF PAYMENT.
—The typical negotiable instrument is payable at a fixed day in the future, as on July 1, 1916, or in three months from day. An instrument payable on demand or at sight or at a fixed period after demand

or sight involves a little extension of the principle of certainty, since no one can tell exactly when demand will be made, but as the holder can make the time certain by making demand, the value of such an instrument is exactly calculable, and there has never been any question that such instruments are negotiable. But the statute allows negotiability to some instruments where there was doubt at common law, though the statute has followed what was previously the weight of authority. An instrument may be payable "on or before" a fixed or determinable future time. Therefore, a note payable on or before July 1 is a negotiable instrument. If this means at the option of the holder there would be no more lack of certainty than in demand paper since in effect the instrument would be payable on demand prior to July 1, and if no prior demand were made, then on that day. But the option is that of the maker, and it is impossible for the holder to tell whether the option will be exercised. Still he knows the exact day when at latest the instrument is payable. A further latitude, however, is allowed by the enactment in subsection 3 that an instrument is negotiable though it is payable on an event "which is certain to happen, though the time of happening be uncertain." That, it seems, is an objectionable provision, and the only reason that the objection is not more apparent is because the case which is permitted is such a rare one. A common illustration given is a note payable on a man's death; that is a time

certain to happen, but the time of happening is uncertain. Now such a note is wholly unsuited for the purpose of negotiable instruments. Negotiable instruments are intended as a kind of adjunct to money, as something that has a definite value and which can be dealt with on that assumption. It is because of this idea, that negotiable instruments are a kind of adjunct to money, that all these requirements which we are considering as to certainty of the promise, the certainty of the time and the certainty of the medium of payment are made. But an instrument payable at a man's death is, of course, of speculative value. It is customary to contrast with such an instrument an instrument made by a bachelor payable on his marriage. That is not certain to happen; he may never marry, and therefore such an instrument is not negotiable, even under the broad words of the Negotiable Instruments Law. So a draft payable on the arrival of certain goods is not negotiable. The goods may never arrive.

28. SECTION 5.—[ADDITIONAL PROVISIONS NOT AFFECTING NEGOTIABILITY.]

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which: (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or (3) Waives the benefit of any law intended for

the advantage or protection of the obligor; or (4) Gives the holder an election to require something to be done in lieu of payment of money. But nothing in this section shall validate any provision or stipulation otherwise illegal.

NOTE.—In the Illinois Act, the words “under this Act,” are added at the end of the first sentence. The effect of this insertion is that the peculiar law previously in force in Illinois allowing negotiability to promises for the delivery of other things than money still remains in force after the enactment of the Negotiable Instruments Law. In the Illinois Act, also the words “if the instrument be not paid at maturity,” are omitted from subsection (2). In the Kentucky Act subsection (3) is omitted. In the Wisconsin Act the words: “Or authorize the waiver of exemptions from execution,” are added at the end of the section.

29. THERE MUST BE NO ADDITIONAL ORDERS OR PROMISES.—After the requirements in the earlier sections of what a negotiable instrument must contain, section 5 provides what it must not contain. There must not be any other additional order or promise. The reason for this is the same as for all the formal requisites of bills and notes—namely that the face of the instrument may show plainly an obligation, the pecuniary value of which can be calculated. The rule forbidding additional orders or promises, which is taken by the statute from the common law, becomes quite important in regard to some of the collateral notes which are used.

30. ADDITIONAL POWERS MAY BE GIVEN.—Section 5 authorizes several provisions in a note as to which there had been some litigation

prior to the enactment of the Negotiable Instruments Law. Thus a power in the instrument to sell collateral securities in case the instrument is not paid at maturity does not interfere with negotiability, nor does a power to confess a judgment if the instrument is not paid at maturity, but that is unimportant in some States because their law does not allow a confession of judgment beforehand by a debtor as part of an obligation, whether negotiable or not. In other States, however, a debtor can give his creditor at the time the debt is created a power authorizing the clerk of court to enter judgment against him, whenever the creditor may request. It is also not destructive of negotiability for the maker or drawer to waive the benefit of any stay or exemption law. That provision too is unimportant in some States because they do not allow such exemptions as the law gives to a debtor to be waived in advance. Nor is it objectionable that the note gives the holder an election to require something to be done in lieu of the payment of money. That last provision seems a considerable addition to mercantile theory. Suppose a promise or order to pay A \$100, or at A's election to build a bay window on his house. Such an alternative seems rather foreign, perhaps, to the idea that negotiable instruments are things of a fixed value current as an adjunct to money, but you will observe that it is the holder who has the option and the holder can always demand money, and therefore can properly fix a

value on that note as if it were simply for \$100. If the option is given to the maker of the instrument it destroys negotiability.

31. ILLUSTRATIONS OF ADDITIONAL PROMISES WHICH DESTROY NEGOTIABILITY.—Now these additions, of which we have spoken, to the promise in the note or order in the bill are all additional powers given to the holder rather than additional promises made by the maker, and the purpose of these powers is to make more certain of performance the main promise to pay. Let us suggest in contrast some additional promises made by the maker. A maker signs a note which includes this statement: "There is deposited to secure this note 100 shares of New York Central, and if at any time this security shall be deemed by the payee of the note insufficient collateral, I promise to deposit further collateral." That instrument would not be negotiable. There is in addition to the promise to pay money a promise to deposit further collateral, and we suppose any collateral note in which the maker promises to do other things than to pay the amount of the note is not a negotiable instrument. Powers given to the holder of the instrument to sell the collateral would not render the instrument non-negotiable. A power, however, to declare the instrument due might be regarded as more objectionable, but probably even that would be held to come within the provision of the statute which says that an instrument payable

on or before a fixed date is valid. In a recent case there was a stipulation on the back of a note that it was secured by collateral and that the payee agreed to look to this security for its payment. It was held that that provision written on the note rendered it non-negotiable. It was in fact not a promise to pay at all events, but a promise to pay out of a particular fund, and if the fund proved insufficient by the terms of the promise nothing would be due.

32. SECTION 6.—[OMISSIONS; SEAL; PARTICULAR MONEY.] The validity and negotiable character of an instrument are not effected by the fact that: (1) It is not dated; or (2) Does not specify the value given, or that any value has been given therefor; or (3) Does not specify the place where it is drawn or the place where it is payable; or (4) Bears a seal; or (5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

NOTE.—In the Illinois Act the following words are inserted at the beginning of subsection (5). "Is payable in current funds: or", and that Act also does not contain the final paragraph of the section.

33. DATE OF A NEGOTIABLE INSTRUMENT.—The lack of a date is unimportant in an instrument unless it is in terms payable a certain period after date. If an instrument in this form were undated it would be an incomplete instrument which would have to be dealt with as provided in section 13.

34. **VALUE RECEIVED.**—Negotiable instruments usually state that they are for value received and this mode of expression is of great antiquity. The original theory of a bill of exchange, which was the earliest form of negotiable instrument, was based on the assumption that the purpose of the parties was to exchange a sum of money actually received by the drawer at his residence for a sum of money to be paid by the drawee at another place. Nevertheless, in recent times at any rate, even apart from statute, it has not been necessary to insert either such a general statement of consideration as the words for “value received,” or a particular statement of the actual consideration given. The last paragraph of section 6 refers to certain special statutes in a number of States requiring that notes given for a patent right shall so state, and there are other statutes in a few jurisdictions requiring a statement of the consideration in notes given for lightning rods, or stallions, or to pedlers. Such statutes, however, are distinctly exceptional.

35. **PLACE OF DRAWING OR PAYMENT.**—A negotiable instrument need not state where it is drawn or where it is payable, because in the absence of such a statement the law is able to determine the place with accuracy. A bill is drawn or a note is made where it is delivered. It is payable at the usual place of business or residence of the person who should make payment. (See section 133.)

36. **SEAL AND NEGOTIABILITY.**—It was a

rule of the common law that a sealed instrument could not be negotiable. This was due to the fact that under the custom of merchants from which the law of bills and notes developed, such instruments were not sealed. When, however, business corporations became common as they did for the first time in the nineteenth century, and especially when it was desired to issue series of bonds which should be payable to bearer and negotiable, the common law rule caused trouble. Some courts without the aid of statutes declared that mercantile custom had extended itself so that bonds payable to bearer became negotiable within the custom of merchants. But the matter was not so free from doubt, as a general proposition, as could have been wished. Subsection 4 of this section, however, settles the matter.

37. INSTRUMENTS PAYABLE IN CURRENCY.—An instrument is none the less negotiable because it “designates a particular kind of current money in which payment is to be made;” that is, a negotiable instrument may be payable in any kind of current money, as in gold or in \$1 bills or other current money. But what does current money mean? Prior to the passage of the Negotiable Instruments Law there was considerable litigation on the question whether an instrument payable in currency or in current funds was negotiable. Some courts held that currency or current funds meant the money or legal tender that was current, and therefore, that the instrument was negotiable.

Other courts said that currency or current funds meant what was current as money, that is, used as such; whether, in fact, it was money or not. It seems probable that the latter meaning is really the true sense of the words, and under that meaning if it is requisite that a negotiable instrument shall be payable in money, an instrument payable in currency or current funds is not negotiable. It is probable that the Negotiable Instruments Law was meant to settle this controversy when it provided that an instrument is negotiable though it designates a particular kind of current money in which payment is to be made; but it cannot be said that those words do settle the controversy. "Current money" as used in the statute does not seem the equivalent of "currency or current funds," if the latter words are understood to mean what is used as money whether it is really money or not. The Supreme Court of Iowa, indeed, has held that a check payable in current funds is not payable in money and is therefore not negotiable. It has been suggested that this section of the Negotiable Instruments Law be universally amended as it has been in Illinois, so that the subsection in question shall read that the negotiable character of an instrument shall not be affected by the fact that it is payable in currency or current funds, or designates a particular kind of current money in which payment is to be made. In the meantime it is safer not to accept as negotiable any

instrument expressed as payable in currency or current funds.

38. SECTION 7.—[WHEN PAYABLE ON DEMAND.] An instrument is payable on demand: (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or (2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

39. WHEN AN INSTRUMENT IS PAYABLE ON DEMAND.—It has already been said that an instrument may be payable on demand. Section 7 of the statute provides that an instrument is payable on demand whether it is expressed to be so payable or at sight or on presentation, also when no time of maturity is expressed in an instrument or when it is negotiated after maturity. By a later amendment to the Negotiable Instruments Law the Massachusetts statutes have revived the sight draft as a distinct form of instrument, and the same thing has been done in New Hampshire and North Carolina, but not generally. The only distinction between a sight draft and a demand draft in these States is that a sight draft is entitled to three days grace, while neither demand paper or time paper under the Negotiable Instrument Law is so entitled. Under the Negotiable Instruments Law itself the sight instrument is made identical with the demand instrument.

40. RIGHTS AGAINST PARTY TO OVERDUE PAPER.—Negotiable paper is not often issued or accepted when on its face overdue, but it is entirely possible and the statute in section 7 (2) provides for it. Indorsement of overdue paper, however, is common enough. The indorsee is not a holder in due course, and takes subject to defences, but he has rights against his indorser. In effect the indorsee has, so far as this last indorser is concerned, a right to treat the instrument as the indorsement of a new demand note, which may be presented within a reasonable time after the indorsement, even though it had been previously presented and dishonored, and may charge this indorser if the note is not paid on the subsequent presentment though other indorsers whose names were on the instrument before the dishonor would be discharged if due diligence had not previously been exercised.

41. SECTION 8.—[WHEN PAYABLE TO ORDER.] The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of: (1) A payee who is not maker, drawer, or drawee; or (2) The drawer or maker; or (3) The drawee; or (4) Two or more payees jointly; or (5) One or some of several payees; or (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

NOTE.—In the Illinois Act after subsection (6) is inserted: “(7) An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate.”

42. WHO MAY BE A PAYEE.—An instrument payable to A, or order, or payable to the order of A, is identical in legal effect; though an instrument in the latter form literally does not say that there is any payee until A makes an order to pay to someone yet A is legally the payee. Not infrequently instruments are made payable on their face to the order of the maker himself, but an instrument in this form is not really a completed instrument, it only becomes so by endorsement; if the endorsement is to a particular person that person is in effect the payee of the instrument. If the indorsement is in blank the instrument is payable to bearer. Other kinds of payees besides those enumerated in section 8 are those enumerated in subsections 3 and 4 of the following section.

Subsection 6 of section 8 changed the previously existing rule of the Common Law. Until the passage of the Negotiable Instruments Law a bill or note payable to the “Treasurer of the A Company” was payable to the person who was treasurer at the time the instrument was delivered, and though he ceased to be treasurer, the instrument was still payable to him, and he alone could indorse it. Now such an instrument would be payable in effect to the office of treasurer and whoever held that office at any time could indorse as treasurer.

43. SECTION 9.—[WHEN PAYABLE TO BEARER.] The instrument is payable to bearer: (1) When it is expressed to be so payable; or (2) When it is payable to a person named therein or bearer; or (3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or (4) When the name of the payee does not purport to be the name of any person; or (5) When the only or last indorsement is an indorsement in blank.

NOTE.—In the Illinois Act subsections (3) and (5) are as follows: “(3) When it is payable to the order of a person known by the drawer or maker to be fictitious or non-existent, or of a living person not intended to have any interest in it.” “(5) When, although originally payable to order, it is indorsed in blank by the payee or a subsequent indorsee.”

44. FICTITIOUS PAYEES.—The first two subsections of section 9 present no difficulty but the enactment in subsection 3 that an instrument is payable to bearer when by its terms it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable, needs some comment. Let us illustrate that situation a moment: a firm in New York has an employee whose duty it is to buy goods, verify the bills for the goods, draw checks payable to the sellers of the goods, and bring the checks to the members of the firm for signature. This employee, desiring to commit a fraud, pretends that certain lots of goods have been received, and draws checks which he presents to his employer for signature, gets them signed, then indorses them and obtains

the money. Now are those checks payable to bearer? If so, the bank which paid them has made a good payment. If they are not payable to bearer, however, unless they are properly indorsed, the bank which pays them is not entitled to charge the payment against its customer's account. They are not payable to bearer because if the person to whom they were payable was fictitious that was not known to the drawer, the person making them so payable. Whether they were payable to the employee himself, so that his indorsement of them is valid, is then the question. He intended that the check should be used by him and in effect he intended to be the payee, but the drawer did not intend to make him so. We may suppose that the drawer in signing a check payable to X Y for goods had in mind that there was a genuine firm of that name or he would not have signed the check. If in fact there was a genuine person or firm it alone could indorse; if there was not a genuine firm, then nobody could indorse. The instrument would not be payable to bearer because the drawer did not know that the payee was fictitious. It would not be payable to the fraudulent clerk, or to any other existing person, because the drawer did not intend that the check should be payable to him.

45. OTHER INSTRUMENTS PAYABLE TO BEARER.—Section 9 also enumerates as payable to bearer an instrument where the payee does not purport to be the name of any person, as “cash;”

and finally, where the only or last indorsement is an indorsement in blank. This provision involves at least an apparent conflict with section 40 of the act. Section 40 provides that if an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery. Suppose, then, an instrument is payable to bearer on its face, the holder of it indorses it specially to Y; Y loses the instrument, it is found by W, who sells it before maturity to Z, an innocent holder. Can Z sue on that instrument in spite of the fact that it is specially indorsed to Y? It would seem under section 40 that he can. The instrument, though payable to bearer and specially indorsed, may nevertheless be further negotiated by delivery. Contrast with that case the following: an instrument payable to the order of A on the face is indorsed by A in blank, and a subsequent holder, B, indorses specially to C; that instrument is also lost and picked up and sold to Z, a bona fide purchaser. Can Z here disregard the special indorsement and go back to the blank indorsement and claim under that as on an instrument payable to bearer? It seems he cannot do that, for section 9 (5) says an instrument is payable to bearer when the only or last indorsement is an indorsement in blank. In this case the last indorsement was a special indorsement; accordingly, the instrument when sold to Z was no longer payable to bearer, and Z, therefore, would have to get the indorsement of the special indorsee in order to get

title. Section 40 probably does not affect this case, because the instrument was on its face payable to order—not to bearer. In other words, Sections 40 and 9 (5) can only be made to avoid a contradiction of one another by confining the application of Section 40 to instruments payable on the face to bearer and by holding such instruments as are covered by Section 9 (5) not included. On strict theory a blank indorsement is a blank power authorizing the holder to insert his own name or that of anyone else as indorsee, but under the statute a blank indorsement is a little more than that; it is making the instrument payable to bearer, though the holder by inserting the name of himself or of another person in the blank space above the indorsement name may change the instrument from one payable to bearer to one payable to a special indorsee or order.

The only practical difference between treating an instrument with a blank indorsement as payable to bearer or as giving a power to any holder is merely that on the latter supposition the instrument is incomplete until the power is exercised and the blank would have to be filled in before the holder could sue.

46. SECTION 10.—[TERMS WHEN SUFFICIENT.] The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

47. SECTION 11.—[DATE, PRESUMPTION AS TO.] Where the instrument or an acceptance

or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

48. INSTRUMENT TAKES EFFECT FROM DELIVERY.—Though the date written on a negotiable instrument is often important, it should be remembered that the instrument takes effect not from the day it bears date, but from the day of delivery, and this is true of any obligation upon a negotiable instrument, whether that of maker, drawer, acceptor or indorser.

49. SECTION 12.—[ANTE-DATED AND POST-DATED.] The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

50. FRAUDULENT ANTE-DATING OR POST-DATING.—This section suggests but does not answer the question, what is the effect of ante-dating or post-dating an instrument for an illegal or fraudulent purpose. The implication from the section would be that such an instrument was invalid, but its invalidity could probably not be set up against a holder in due course. Suppose a note actually made and delivered on Sunday is ante-dated or post-dated so that it shall appear to have been made on Saturday or Monday. In a jurisdiction where the Sunday law forbids doing business on that day,

doubtless the instrument could not be enforced between the original parties, but one who purchased the instrument having no knowledge of the facts would certainly be justified in relying on the date as written. The mere fact that an instrument is post-dated does not prevent one who takes it with knowledge of the fact from being a holder in due course.

51. SECTION 13.—[WHEN DATE MAY BE INSERTED.] Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

52. INSERTION OF WRONG DATE.—No question is likely to arise under this section where the true date is inserted after the issue of the instrument. The final sentence of the section, however, suggests an inquiry. The implication of the sentence is that the insertion of a wrong date will avoid an instrument in the hands of the original person who made the insertion; or in the hands of any one taking from him with notice or after maturity, for such a person is not a holder in due course. This seems a heavy penalty if the erroneous date was inserted without fraudulent intent, and on the sup-

position that the date inserted was the true one. The moral to be drawn is that a date should not be inserted in an undated instrument unless one is perfectly sure that the insertion represents the true date.

53. SECTION 14.—[BLANKS; WHEN MAY BE FILLED.] Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

NOTE.—In the Illinois Act the words “issued or” are inserted before “negotiated” in the last sentence. In the Wisconsin Act the words “prior to negotiation” are inserted before the words “by filling;” and the words “*prima facie*” in the middle of the section are omitted.

54. FILLING BLANKS.—This section deals generally with the problem of which one application was discussed under the preceding section with reference to an omission of the date. By fil-

ling in a blank we do not mean filling in a space carelessly left in the place where the amount of the instrument is written, but the filling in of a space intentionally left. The statute makes express provision for this sort of thing in sections 13, 14, 15 and 138. In substance, the effect of these sections is that any holder in due course who takes the instrument after it has been completely filled in can enforce it. The person who left the blanks is bound by the way they are filled in so far as the holder in due course is concerned, but any one who took the instrument while there were still blanks in it must at his peril find out what the actual authority is to fill in the blanks, and he can only recover to the extent that actual authority was given to fill in the blanks. The troublesome case is where the holder takes the instrument after the blanks have been filled in, but knowing that there had been blanks. Is that person bound to find out at his peril what the original authority was? That seems on the wording of the statute a doubtful case. These are the facts of a case that arose in England: the defendant signed blank forms of promissory notes and left them with his attorney, giving, however, the attorney no authority to complete and issue these notes until instructed by telegraph or letter from the maker. Nevertheless, the attorney, without further instruction, filled up the blanks, making the plaintiff the payee of the notes. The plaintiff bought the notes in good faith and for value, but he knew,

nevertheless, that they had been signed in blank and had been left with the attorney; but the payee supposed the attorney was following the directions which had been given him by the maker. The plaintiff made no inquiry in regard to the attorney's authority. He took it for granted that the attorney was acting properly. The English court held that the maker was not liable on those instruments. It seems like a pretty hard decision. Perhaps it might not be followed in this country. Nevertheless, the fact that there has been one such decision, and a decision under the English statute, which is identical with the American Negotiable Instruments Law, in the provisions controlling this question, makes the probability rather than way.

55. SECTION 15. — [INCOMPLETE INSTRUMENT NOT DELIVERED.] Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

56. LACK OF DELIVERY AN ABSOLUTE DEFENCE TO AN INCOMPLETE INSTRUMENT.—This section should be contrasted with the following one. Lack of delivery of a completed instrument does not excuse one whose name is attached to it. There is only what we have called a personal defence or equity which will not be available against a holder in due course. But if the instrument is incomplete it cannot be made

valid even in the hands of such a holder. In other words when we attach our names to a completed instrument we must guard it at our peril. Even if stolen from us we may be made liable upon it; but while it is incomplete we run no such risk.

57. SECTION 16.—[DELIVERY: WHEN EFFECTUAL: WHEN PRESUMED.] Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

NOTE.—In the North Carolina Act the word “accepting” is omitted from the second sentence. In the Kansas Act the third sentence of the section is omitted.

58. LACK OF DELIVERY OF A COMPLETE INSTRUMENT IS A PERSONAL DEFENCE.

—Though the opening sentence of this section says delivery is essential, a later sentence says that when

in the hands of a holder in due course an instrument is "conclusively presumed" to have been delivered. That means that even though there was no delivery there will be liability to a holder in due course. The result of the section is that a party whose signature is on an instrument but who never delivered the signed instrument has a personal defence or equity but nothing more.

59. SECTION 17. — [CONSTRUCTION WHERE INSTRUMENT IS AMBIGUOUS.] Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof. (3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued; (4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail; (5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election; (6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

NOTE.—In the North Carolina Act subsection (2) is omitted. In the Wisconsin Act is added: "(8) Where several writings are executed at or about the same time, as parts of the same transactions, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof."

60. RULES OF CONSTRUCTION.—The provisions of this section are in the main self explanatory. The figures which it is customary to put in a bill or note to indicate the amount are not regarded strictly as part of the instrument. If the amount is also written out in words the figures are considered merely a memorandum. The 4th sub-section states a rule of construction that is applicable not only to bills and notes but to all written contracts. The rule rests on the natural supposition that the parties are more likely to have overlooked or misread the printed matter in the form which they used than they are to have written what they did not intend. The typical case, which gave rise to the 5th subsection, presented an instrument in this form, "On demand I promise to pay B, or bearer, the sum of £15 value received." This was signed and addressed to J. Bell, to whom it was presented, and who wrote upon it "accepted, J. Bell." It was held that Bell was liable as an acceptor of a bill though the holder might, had he chosen, have sued the original signer of the instrument as the maker

of a promissory note. The 7th subsection follows the rule of the common law. The instrument as written is self contradictory, being signed by several persons, but beginning "I" promise to pay. If it read "we promise to pay," the obligation would be joint; that is, all the parties would have to be joined in an action. The use of the word "I," however, is thought to indicate an intent that each person shall be severally liable; therefore the makers of such an instrument may all be sued jointly or each of them may be sued separately.

61. SECTION 18.—[LIABILITY OF PERSON SIGNING IN TRADE OR ASSUMED NAME.] No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

62. FORM OF SIGNATURE.—This section applies to negotiable instruments a rule which the common law applied to sealed instruments but did not apply to oral contracts or to informal written contracts, namely, that a person who has ostensibly contracted could not be shown to have been an agent for a principal whether the principal was disclosed or undisclosed. If, on behalf of his principal, an agent enters into a simple contract with another person, the latter can charge the principal on the agent's contract even though the agent did not announce that he was acting on behalf of his

principal, and this fact was wholly unknown at the time to the person with whom he dealt. On the other hand in sealed instruments and in negotiable instruments, the person who signs the documents is the only party liable, and it is immaterial that the payee or other holders of the instrument know that he signed the instrument on behalf of his principal and in his principal's business. A name may be signed by mark or by any assumed name. It is sometimes supposed that we cannot change our names without the authority of court or legislature, but in fact anybody can assume any name he pleases; at least if he does so without fraudulent intent. It may take some time for an assumed name to become known as his, so as to give him a right to complain if other persons do not identify him as the one intended by the name, but he will incur liability without difficulty the very first time he uses an assumed name if he signs it to an obligation.

63. SECTION 19. — [SIGNATURE BY AGENT; AUTHORITY; HOW SHOWN.] The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

NOTE.—In the Kentucky Act instead of this section it is provided that: "The signature of any party may be made by an agent duly authorized in writing."

64. WHEN A SIGNATURE BY AN AGENT BINDS THE PRINCIPAL.—An agent may bind his principal by signing negotiable paper if (1) the agent had actual or apparent authority so to do, and (2) exercises the authority by a form of signature sufficient to charge the principal. A signature of the principal's name by the agent without any indication that the name was signed by an agent is sufficient, though business propriety requires that the instrument should state that the principal's name was signed "by A. B. Agent." A signature of the agent's name followed by the words "on account" of a named principal makes the instrument the obligation of the principal, so if made on "behalf of" or "for" a named principal.

65. SECTION 20.—[LIABILITY OF PERSON SIGNING AS AGENT, ETC.] Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

NOTE.—In the Virginia Act after the word "capacity" the words "without disclosing his principal" are inserted.

66. DESCRIPTIO PERSONAE.—In contrast with the cases referred to under the previous sections are to be noted numerous cases where it is held that the mere addition of the word "agent" or

such official designation as "President," "Treasurer," "Trustee," in the absence of words in the body of the instrument showing a different intent does not make the instrument the obligation of the principal or corporation, but the obligation is that of the agent or official personally. The addition to the signature is treated as matter of description like "Colonel" or "Professor." This result doubtless violates the intention of the parties in most instances. The reason for its adoption is because if the agent were not held personally liable, no one would be liable. The principal could not be because he is not named in the instrument, and, as has already been said, no one whose signature does not appear on the instrument can be held liable upon it. If, however, the body of the instrument states the name of the principal the signature "A. B. Agent," will make the obligation that of the principal, not of the agent.

67. SECTION 21.—[SIGNATURE BY PROCURATION; EFFECT OF.] A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

68. PROCURATION.—In regard to signature of agents generally, it is the rule that the principal is bound not only when the agent had actual authority to execute the instrument in question, but also where he had apparent authority. Where, however,

the agent's signature is made per procuration, apparent authority is insufficient; nothing but actual authority will bind the principal.

69. SECTION 22.—[EFFECT OF INDORSEMENT BY INFANT OR CORPORATION.] The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

70. ULTRA VIRES INDORSEMENT, BY A CORPORATION.—Prior to the passage of the Negotiable Instruments Law the rule in regard to the acts of corporations was this: If the corporation had not power to do a certain act or, in legal phrase, if its action was ultra vires, it was held by many authorities that the transaction was actually void. The corporation, therefore, would not be liable by virtue of the signature of its name, nor would the signature be effectual to transfer title to another. Section 22 of the statute, therefore, changes the law in these jurisdictions so far as the transfer of title to the instrument is concerned. Business corporations generally have power to enter into obligations on negotiable paper.

71. INDORSEMENT BY AN INFANT.—The case of an infant was a little different at common law from that of a corporation. An infant, that is a minor, at common law, could transfer title, but could avoid such a transfer unless after attaining his majority, he ratified the transfer. It is not clear

from the wording of the statute whether an infant has now lost his capacity to re-vest title in himself. Presumably the law is unchanged in this respect. Therefore, an instrument which has formerly belonged to an infant whose indorsement is necessary to complete the holder's claim of title, is not a desirable instrument to purchase.

72. SECTION 23.—[FORGED SIGNATURE; EFFECT OF.] When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

73. LACK OF GENUINENESS BECAUSE OF FORGERY.—Lack of genuineness of the instrument is an absolute defence. This may arise from several causes, for instance, forgery. This is referred to in section 23 of the statute, where it is expressly provided that when a signature is forged or made without authority it is not operative, unless the party against whom it is sought to enforce the instrument is precluded from setting up the forgery or want of authority. When is one precluded from setting up forgery or want of authority? Whenever he has led anybody to believe that the signature is genuine or authorized, and that person has

in reliance on the belief changed his position. Suppose this case. A's signature is forged, but he nevertheless when asked by some one if that is his note says, "Yes." Relying on that statement the inquirer purchases the note. A could not thereafter set up the defence of forgery. But suppose the purchaser purchased the note first, and having purchased it asked the maker if that was his signature. Here again the maker says, "Yes." In this case he will not be precluded for setting up the forgery because no action has been taken in reliance on his statement, and a forgery according to the weight of authority cannot be ratified or adopted by a mere assent to be bound, unless there has been a reliance on the adoption and a change of position. A drawee is also precluded from setting up, as a ground for recovering a payment, that the drawer's signature was forged.

74. SIGNATURE OF UNAUTHORIZED AGENT.—In that respect the case of forgery is different from another case of lack of genuineness, namely, where the instrument was made by an agent without authority. The principal may ratify the act of an agent without authority, and this ratification is good without consideration and without any reliance or change of position. Accordingly, if the purchaser of a note which purports to be made by A through an agent, asks A, after having purchased the note, "Was that agent authorized to sign this?" and A says either, "Yes, he was," or, "No, he

wasn't, but I ratify his act," A will be bound just as much as though he had made those statements before the purchaser bought the note and the purchaser had bought in reliance on the statement.

75. **SIGNATURE OF UNAUTHORIZED CORPORATION OR OFFICER.**—Another kind of lack of authority which also prevents an instrument from being genuine is where a corporation makes a note without authority. It may be that the corporation itself had no authority to make a note, that it was *ultra vires* in legal phraseology. Or it may be that though the corporation had power to make a note, the particular officer who attempted to bind the corporation did not have power to do so. In either case the corporation is not bound. There is an absolute defence, unless here also the corporation is precluded from setting up the defence by having induced a purchaser to believe that there was sufficient authority, and even if the corporation does induce a purchaser to believe there was authority, it cannot exceed the limits imposed upon it by its charter. A business corporation in general would have power to issue negotiable paper, but some kinds of corporations would not.

76. **FORGED INDORSEMENT.**—The commonest case where the holder has difficulty in making out title is where some indorsement is forged. It does not matter which indorsement if all are special indorsements. If any one is forged there can be no recovery. Suppose this case, how-

ever: an instrument payable to A or order is indorsed in blank by A, then there is a forged special indorsement to B, and subsequently a genuine indorsement of B to C. C can recover on that instrument because he can fill in his own name over the blank indorsement and strike out the subsequent indorsements. (Section 48.) Contrast with that case this: an instrument payable to A or order indorsed in blank by A and then specially indorsed by a genuine indorsement of the holder to B. B's indorsement is forged and then the instrument comes into the hands of C, a bona fide purchaser. In this case C cannot collect. He cannot write his name over the blank indorsement here because the subsequent genuine special indorsement restricts the negotiability of the paper, and it is necessary that there shall be a genuine indorsement from B in order to transfer title. In the first case the special indorsement being forged did not restrict the effect of the blank indorsement. If a payment is actually made on an instrument to one whose right is derived through a forged indorsement, the payment may be recovered. The case is different from that of a forged drawing. We have seen in paragraph 31 that the drawee in that case cannot recover back what he pays, but if the drawee pays an instrument to one who claims under a forged indorsement, he can recover his money back even from an innocent holder. The reason for the difference is that in the forged indorsement case the holder did not own the

instrument which was paid. The payment was due to somebody else. In the case of the forged drawing the holder who presented that draft had a poor thing, but it was his and if the drawee chose to honor it that was the drawee's lookout.

Article II—Consideration

77. SECTION 24.—[PRESUMPTION OF CONSIDERATION.] Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

78. CONSIDERATION IN NEGOTIABLE INSTRUMENTS AS COMPARED WITH THAT IN OTHER CONTRACTS.—The rule stated in this section differs from that which prevails in regard to simple contracts at common law. In regard to such contracts the rule was and still is in most States that even in case of a written contract which is not under seal, the promisee when suing the promisor must allege and prove sufficient consideration to support the promise; nothing is presumed in the promisee's favor. In a few jurisdictions this rule has been changed in regard to all written contracts making the rule similar in regard to such contracts with that stated in Section 24 of the negotiable instruments law. Though consideration is presumed *prima facie* to have been given for every obligation on a negotiable instrument, the

truth may be shown by any party, and if when shown it appears that no value or consideration in fact existed, the defence will be good as against any one but a holder in due course.

79. SECTION 25. — [CONSIDERATION, WHAT CONSTITUTES.] Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

NOTE.—In the Wisconsin Act the words “discharged, extinguished or extended” are inserted after the word “debt,” and at the end of the section is added: “But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value.”

80. WHAT IS SUFFICIENT CONSIDERATION IN SIMPLE CONTRACTS.—As to what is consideration, the rules of negotiable paper are in general identical with those of simple contracts, and it is, therefore, necessary to define briefly, what consideration is necessary to make a simple contract binding—that is, what is necessary to make an ordinary promise legally enforceable as a contract. The promisee must give something or promise to give something to the promisor in exchange for his promise which he has assented to receive as the price for his promise; and the thing so given or promised as consideration must be something to which the promisor was not previously entitled. Doing or promising to do something which one was

previously legally bound to do is not sufficient consideration. The thing given or promised as consideration need not, however, be tangible, it may be the surrender of a right or the forbearance to enforce a claim; but the surrender of a claim known to be invalid or the forbearance to prosecute a claim known to be unfounded is insufficient.

81. SATISFACTION OF AN ANTECEDENT DEBT IS SUFFICIENT CONSIDERATION.—

There are some differences, however, between the rules of consideration for negotiable paper and for ordinary simple contracts. In the first place, a negotiable instrument may be given for an antecedent or pre-existing debt. That is not so in the case of simple contracts. When we owe a debt and say verbally, "We promise to pay that," or make such a promise in writing, we could not be sued on the promise. The old obligation, of course, still exists, but the new promise creates no new liability, because nothing new is given in exchange for it. But in the case of a negotiable instrument, if there is an antecedent debt, the antecedent debt may be paid or may be secured by a negotiable instrument, and the negotiable instrument creates an immediate new obligation.

82. CONSIDERATION NEED NOT MOVE FROM THE PROMISEE TO THE PROMISOR.

—There is another difference. In simple contracts the consideration must ordinarily move from the

promisee to the promisor. It is something the promisee gives for the promise. That is not necessarily true in negotiable paper. In order to make a promise binding on a negotiable instrument it is essential either that the promisee shall have parted with something or that the promisor, the obligor on the instrument, shall have received something; but it is not essential that both shall concur. The promisee need not have given something to the obligor. Let us give an illustration: A wishes to pay C's claim against B, and A accordingly gives C his (A's) note in satisfaction of C's claim against B. A has bound himself by that instrument though he has received nothing. C has given up something, his claim against B, and that is enough. Also, you may have a case where A, the maker, receives something, as where he at the request of B, to whom he owes money, gives a note for the amount to C instead of to B, who wishes to make C a present of the note. There A has received something, since he has been discharged from the claim that B had against him, but C, who holds that note, has given nothing for it. Yet he can recover on it. To repeat, then, if either the obligor has received something or the holder has given something there is sufficient value or consideration for a negotiable instrument.

83. SECTION 26.—[WHAT CONSTITUTES HOLDER FOR VALUE.] Where value has at any time been given for the instrument, the holder

is deemed a holder for value in respect to all parties who became such prior to that time.

84. **CONSIDERATION ONCE EXISTING MAKES OBLIGATION PERMANENT.**—A further feature of consideration in negotiable instruments is that if an instrument has once become binding, or if an obligation on an instrument has become binding, because the obligor has received value or a holder has given value, lack of consideration in subsequent transfers is immaterial, so far as concerns the liability of parties to the instrument at the time when value was given or received. To illustrate: A wishes, we will suppose again, to pay a debt B owes to C, A accordingly gives his own note to C, who receives it in payment. Now A has received nothing, but C has surrendered his claim against B, so the note is binding. Suppose, further, C gives that note to D, a pure gift. D now has given nothing for the note and A has received nothing for his promise on it, and yet the note is binding because it was binding in C's hands and D succeeds to C's rights, but if C transferred the note to D by indorsement as a gift, D could not hold C liable as indorser for no value was ever given or received for that indorsement.

85. **SECTION 27.**—[WHEN LIEN ON INSTRUMENT CONSTITUTES HOLDER FOR VALUE.] Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

86. PLEDGE OF AN INSTRUMENT SUBJECT TO A PERSONAL DEFENCE. — If a negotiable instrument which is subject to an equity is pledged as security for a debt, the pledgee, if a holder in due course, is protected to the amount of his advances. The following case will illustrate the law: Suppose the maker is fraudulently induced by the payee to sign a negotiable note for \$1,000; the payee transfers this note to secure a note of his own for \$500 which he borrows from the transferee. The lender if he took the \$1,000 note in good faith can recover \$500 on it, but no more. Now suppose the lender subsequently advanced a further sum of \$200 on the faith of the \$1,000 note. If this further advance was also made in good faith without notice of the fraud, the lender could now recover \$700 from the maker of the larger note. If, however, the \$200 was advanced after notice of the fraud, the maker could recover only the \$500 which was first advanced, as he was then acting in good faith, but could not recover the later advance.

87. SECTION 28.—[EFFECT OF WANT OF CONSIDERATION.] Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defence pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

88. CONSIDERATION NECESSARY AS TO EVERY PARTY.—Though it is assumed until the

contrary is shown that every party to a negotiable instrument has received value (Section 24) yet the truth may be shown (Section 28) and if in fact there was no value or consideration the obligation cannot be enforced by any one except a holder in due course, and in dealing with the subject of consideration it must be remembered that each party is to be considered separately with reference to that point. There may be consideration so far as a maker of a note is concerned, but none so far as an indorser is concerned; for instance, if a maker borrowed money and subsequently the bank from which the money was borrowed got another person to indorse, the maker would have received consideration and the note would be binding as against him, but it would not be binding as against the indorser. If, however, the indorser received consideration later when he put on his signature he also would be bound; for instance, if the note had become due and the bank said that it might lie awhile unpaid if the maker would get an indorser, and the indorser came in and indorsed in consideration of the bank's forbearing to enforce the note for a time, that would be enough to make the indorser also liable.

89. THE SAME CONSIDERATION MAY SUPPORT SEVERAL PROMISES.—Although there must be consideration for the promise of each party, or he will not be bound, the same consideration may serve for several promises; for instance, if a bank says it will lend money on a note with two

indorsers, and it does lend money on such a note, the money lent is a consideration not only for the maker's obligation but for the obligation of each indorser. The bank demanded the price of several obligations for its one loan, and that one loan was consideration for all.

90. SECTION 29.—[LIABILITY OF ACCOMMODATION PARTY.] An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

NOTE.—In the Illinois Act the words "without receiving value therefor" are omitted and at the end of the section is added, "and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity."

91. ACCOMMODATION SIGNATURES.—Of course lack of consideration is always a defence to an accommodation signature so long as the paper signed has not been transferred to some one who has given value for it. The name "accommodation signer" signifies that he has received no value for his signature, and unless the instrument gets into the hands of some holder who pays something there would be neither value received by the accommodating obligor nor value given by the holder. But as soon as a holder for value comes in, then you

have the necessary element of consideration. It will not then make any difference that the accommodation party received nothing. It is enough that the holder has given something for the instrument; and it does not matter that the holder when he gave the value knew that the instrument was for accommodation. That is not knowledge of fraud or of any impropriety.

Article III—Negotiation

92. SECTION 30.—[WHAT CONSTITUTES NEGOTIATION.] An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

93. NEGOTIATION.—Having considered the liability of the various parties to negotiable instruments, we now come to the question of negotiation of the instruments. They may be negotiated either by indorsement or, if payable to bearer, by delivery. In considering this section we must bear in mind that under the definition of section 9, other instruments than those in terms made payable on the face to bearer, are classified under the law as payable to bearer.

94. WHO MAY NEGOTIATE.—When negotiation of a negotiable instrument is by delivery, the delivery may be by anybody. Even a thief or a

finder can make an effective delivery of an instrument payable to bearer, so that a holder in due course will get an indefeasible title. On the other hand, if an instrument is payable to order, the indorsement must be by the person entitled to the instrument; no other indorsement will do.

95. SECTION 31.—[INDORSEMENT; HOW MADE.] The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

NOTE.—In the Illinois Act the following words are added “and the addition of words of assignment or guaranty shall not negative the additional effect of the signature as an indorsement, unless otherwise expressly stated.”

96. EXPLANATION OF SECTION 31.—An acceptance of a bill of exchange is the only obligation on negotiable instruments which is not required by law to be upon the instrument itself. It is really no exception to this rule that if the back of an instrument is covered already with indorsements, a piece of paper called an allonge may be attached to the paper and further endorsements written upon that.

97. SECTION 32.—[INDORSEMENT MUST BE OF ENTIRE INSTRUMENT.] The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the in-

strument has been paid in part, it may be indorsed as to the residue.

98. EXPLANATION OF SECTION 32.—A writing on the back of a negotiable instrument which purported to be an indorsement of part of it would not be wholly ineffectual but it would not negotiate the instrument or itself be negotiable. It would amount to a common law assignment of a portion of the holder's rights under the instrument; and as this assignment would be written on the instrument itself, any holder who took the instrument would have notice of the assignment, and be bound to respect it. The only important limitation, therefore, on the rights of one to whom the holder purports to indorse a part of the instrument is that he would not be given the privileges of a holder in due course. Like any assignee of a chose in action (that is a contract right) he would be subject to all personal defences or equities which prior parties to the instrument might have.

99. SECTION 33.—[KINDS OF INDORSEMENT.] An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

100. KINDS OF INDORSERS.—The next person whose liability is to be considered is the indorser. An indorsement must be written on the instrument itself or on a paper attached thereto. A writing on a detached paper cannot be an indorsement. (Section 31.) Normally the payee is the first in-

dorser. The several kinds of indorsement are enumerated in Section 33, with one addition which is defined in Section 64. The statute says an indorsement may be either special or in blank; it may be restrictive, qualified or conditional. The additional kind may be called an anomalous or irregular indorsement. The meaning of a special indorsement as distinguished from an indorsement in blank is, of course, plain. The indorsement in blank in effect makes the instrument payable to bearer. The special indorsement defined in the following section makes necessary the signature of the special indorsee for further negotiation. A blank indorsement may be converted by any holder into a special indorsement by writing over the indorser's signature the name of the indorsee desired. An indorsement is an order. It is sometimes said to be the drawing of a new bill on the drawee or maker; at any rate, it is an order on him. The full form of indorsement is, "Pay to the order of," just the words the drawer of an instrument uses, and the person ordered to pay is the drawee or maker. Though this order does not say so in terms, by mercantile custom it operates as an assignment or transfer of the instrument, and also operates to create an obligation to pay the indorsed instrument, if dishonored by the primary party, on receiving due notice of the dishonor. Ordinarily, words of assignment on the back of a negotiable instrument will not amount to an unqualified indorsement. Nor can an indorse-

ment be partial (Section 32). It must always relate to the entire instrument (Section 32).

101. SECTION 34.—[SPECIAL INDORSEMENT; INDORSEMENT IN BLANK.] A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

102. COMMENT ON SECTION 34.—The definition of a special indorsement is familiar to everyone. The provision that an indorsement in blank is payable to bearer is repeated from Section 9 (5).

103. SECTION 35.—[BLANK INDORSEMENT; HOW CHANGED TO SPECIAL INDORSEMENT.] The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

104. COMMENT ON SECTION 35.—Though an instrument endorsed in blank is payable to bearer, any holder by writing a special endorsement over the signature deprives the instrument of its character; it will then become subject to the rules of order paper.

105. SECTION 36.—[WHEN INDORSEMENT RESTRICTIVE.] An indorsement is restrictive, which either,—

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

106. COMMENT ON SECTION 36.—This enumeration of what constitutes a restrictive indorsement is self-explanatory. The more troublesome matter of the effect of restrictively indorsing is dealt with in the next section.

107. SECTION 37.—[EFFECT OF RESTRICTING INDORSEMENT; RIGHTS OF INDORSEE.] A restrictive indorsement confers upon the indorsee the right,— (1) To receive payment of the instrument; (2) To bring any action thereon that the indorser could bring; (3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

NOTE.—In the Illinois Act the following words are added to subsection 2: “or except in the case of a restrictive indorsement specified in section 36—subsection 2—any action against the indorser or any prior party that a special indorsee would be entitled to bring.” Subsection 3 reads as follows: “(3) To transfer the instrument, where the form of the indorsement authorizes him to do so” and at the end of the section is added: “specified in section 36—subsection 1—and as against the principal or cestui que trust only the title of the first indorsee under the restrictive indorsement specified in section 36—subsections 2 and 3 respectively.”

108. INDORSEMENT FOR COLLECTION.

—The commonest case of a restrictive indorsement is an indorsement for collection. Such an indorsement vests the indorsee with title and a right to bring any action the indorser could bring, and enables the indorsee to transfer his rights to another; but the person to whom the instrument is thus transferred by the restrictive indorsee will also be restricted to the same extent; that is, if an indorsee of paper for collection transfers it to somebody else, that subsequent transferee is also restricted and holds the instrument for collection.

109. SECTION 38. — [QUALIFIED INDORSEMENT.] A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

110. COMMENT ON SECTION 38.—A qualified indorsement is defined in Section 38 of the Act as constituting the indorser a mere assignor. It does not follow that the indorsee is a mere assignee, who takes subject to equities. The final sentence of the section indicates that the indorsee if a holder in due course will take free from equities. The ordinary way of making a qualified indorsement is by adding the words, "without recourse," but the words, "I hereby transfer and assign all my rights, title and interest in and to the within note," have

also been held a qualified indorsement, and in effect an assignment of the instrument, without creating any obligation on the part of the indorser to pay the instrument if dishonored by the party primarily liable.

111. SECTION 39.—[CONDITIONAL INDORSEMENT.] Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

112. ILLUSTRATION OF CONDITIONAL INDORSEMENTS.—A conditional indorsement is not commonly seen. An illustration of one would be an indorsement which reads, "Pay to the order of X Y if A B goes into bankruptcy," or one which is subject to any other condition. It might be thought such an indorsement would be invalid altogether, but the statute provides that the party primarily liable on such an instrument may either disregard the condition or recognize it; but if the condition is disregarded and payment made though the condition has not happened, the person who receives payment will hold it subject to the condition. In the case we put where the instrument was indorsed to X Y if A B becomes bankrupt, the maker of the instrument might pay X Y safely, whether A B becomes bankrupt or not, but X Y would have

to hold that payment in trust for the person from whom he received the instrument, unless A B did in fact become bankrupt.

113. SECTION 40.—[INDORSEMENT OF INSTRUMENT PAYABLE TO BEARER.] Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

NOTE.—The Illinois Act instead of the words “payable to bearer,” are the words “originally payable to or indorsed specially to bearer.”

114. COMMENT ON SECTION 40.—We have previously considered under Section 9, the effect of this section in connection with Section 9 (5).

115. SECTION 41. — [INDORSEMENT WHERE PAYABLE TO TWO OR MORE PERSONS.] Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

116. EXPLANATION OF SECTION 41.—Where two or more persons own property, title can only be transferred when all agree to transfer it. The provisions of Section 41 simply apply this to the law of negotiable paper; and the exception to the general rule stated in Section 41 also applies to all property, subject, however, to one qualification. Partners have authority to act for one another and for the firm in the firm business. Therefore, under the doctrines of agency, one partner may indorse

for the firm, and so in other than partnership cases, if one payee has in fact authority to act for the others, he may do so. The single qualification to which allusion has just been made relates to trustees. One trustee can not delegate power to another to do any act which requires the exercise of judgment; therefore though one trustee might authorize another to indorse negotiable paper for collection, he could not transfer by way of sale negotiable paper belonging to the trust, even though authorized by his trustees to do so. The signature of all would be necessary.

117. SECTION 42.—[EFFECT OF INSTRUMENT DRAWN OR INDORSED TO A PERSON AS CASHIER.] Where an instrument is drawn or indorsed to a person as “Cashier” or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

118. ILLUSTRATION.—Suppose A does business as the Boston Hat Company and gets a check or note payable to the Boston Hat Company. Ordinarily and normally he would indorse that in the name of the Boston Hat Company, but if he did not want to do so, he might indorse it in the name of A. The Boston Hat Company is the name under which A does business. It is a business designation of A. If the Boston Hat Company were really a corporation, then the instrument would have to be

indorsed in the name of the corporation, for the corporation would be a different person from A, although A might own all the stock in the corporation; but the mere designation "the Boston Hat Company," if there is no corporation, does not create a separate person. The Boston Hat Company is A, and A may indorse, since he is the real payee and holder.

119. INDORSEMENT UNDER NAME DIFFERING FROM THAT ON INSTRUMENT.—

What if an instrument, on its face or by indorsement, is made payable to the order of a single woman by her maiden name and she marries. Her indorsement in her married name is all right. She is the owner and payee, or indorsee, of that instrument and can give a good title in her own name. So if a person changed his name otherwise than by marriage he could indorse in his new name and transfer title to negotiable paper which was payable to or indorsed to him in his old name. He naturally wouldn't do that; he would seek to avoid question by using the name, so far as possible, under which he was designated in the negotiable paper, but he has the legal power to use his real name. Sometimes in order to make his right abundantly clear, he indorses in both names.

120. INDORSEMENT BY ONE HAVING NAME IDENTICAL TO PAYEE'S.—On the other hand, even though a person has an identical name with that of a payee or indorsee of paper, he

cannot transfer good title to it if he is not really the person intended as payee or indorsee. Suppose a check is payable to John Smith, and by mistake it is delivered to the wrong John Smith, and we will even go so far as to suppose that the man to whom it is delivered thinks that it was intended for him; still his indorsement will not give good title even to a holder in due course, nor will it protect a bank which pays on the faith of it. In this respect the law in this country is more severe than the English or German laws. Both the English and German laws protect a bank which pays in good faith an instrument apparently regular in drawing and indorsing, even though the indorsement be made by the wrong person or be forged.

121. IMPERSONATION.—We may suppose one other case of indorsement where the indorser's name is not apparently that on the face of the instrument. Suppose X comes to A and by stating that he (X) is Y (a case of false and fraudulent misrepresentation) induces A to give him (X) a check payable to Y. It is generally held that such a check is really payable to X under the name of Y. A intended to make the person before him the payee, although he thought the name of the person before him was Y and therefore inserted that name. Accordingly, since X is the real payee, he can transfer a title to that instrument by indorsing it either in his own name or in the name of Y, his assumed name. The same principles would be applicable if

an instrument was specially indorsed to X under the name of Y.

122. ASSUMED OR BUSINESS NAMES.—A person may even for a single transaction assume a name different from his own, and if the instrument is really intended to be made payable to him or indorsed to him, he has a title which he can transfer either under his temporarily assumed name or under his real name. If one calls himself John Smith and gets a check in that form, it is really payable to him, and he may transfer title to it by any name that designates him. Section 42 of the Act specifically refers to common cases of this sort of thing; that is, where an instrument is made payable to the cashier or fiscal agent of a corporation. There the statute says that *prima facie* the instrument is to be treated as payable to the corporation itself, and it may be indorsed either by the officer or by the corporation itself. The statute does not say so, but we presume the same thing would be true the other way around. Suppose a note payable to the bank or fiscal corporation and indorsed in the name of the cashier or fiscal officer, as a check payable to the A bank indorsed "X Y, cashier of the A bank." That indorsement would be good. That is a sort of business designation for purpose of negotiating paper of the A bank. It is equally true that one who signs negotiable paper under a trade or assumed name incurs the same liability as if he signed his own name. (Section 18.)

123. SECTION 43. — [INDORSEMENT WHERE NAME IS MISSPELLED, ET CETERA.] Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

124. EXPLANATION OF SECTION 43.— The provisions of this section are a necessary consequence of the previous provision allowing a man to sign a negotiable instrument in an assumed name. If he may sign in an assumed name, necessarily he may in a misspelled name. The further addition of his name correctly spelled is merely for the purposes of avoiding confusion.

125. SECTION 44.—[INDORSEMENT IN REPRESENTATIVE CAPACITY.] Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

126. HOW AN AGENT SHOULD INDORSE.—As we have seen, the signature of “A, agent,” imposes personal liability on A. A problem therefore is presented to an agent when in his principal’s business he receives negotiable paper payable to him as agent, and he desires to discount or otherwise negotiate it. If he makes an indorsement as “A, agent,” he will subject himself to personal liability. He must, therefore, negative the inference that he means to contract personally. Of course, he can do this by indorsing without recourse, but those with whom he is dealing may demand an indorsement

which will be binding as an obligation. In such a case he should indorse so as to bind his principal but not himself. He may do this by signing his name "on behalf of" his principal, naming the latter or, by signing the principal's name "by" himself as agent. Though an indorsement in the latter form does not follow literally the terms of the face of the instrument, and therefore might not be a desirable one for a bank to accept, it is legally sufficient.

127. SECTION 45.—[TIME OF INDORSEMENT; PRESUMPTION.] Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

128. SECTION 46.—[PLACE OF INDORSEMENT; PRESUMPTION.] Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

129. IMPORTANCE OF PLACE OF INDORSEMENT.—The place of indorsement may be important in deciding whether or not an indorser is liable. For instance, in a recent case a married woman who indorsed for accommodation a note dated and payable in New York, when sued on her indorsement sought to show that the indorsement was in fact made in New York and was invalid under the laws of that State. It was held that this could not be shown against the plaintiff, a holder in due course. As against anybody except a holder

in due course, the evidence would have been admissible.

130. SECTION 47.—[CONTINUATION OF NEGOTIABLE CHARACTER.] An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

131. COMMENT ON SECTION 47.—Under this section a negotiable instrument continues to be negotiable after maturity as well as before, although as appears from other sections of the Act, the rights and obligations of the parties are different after maturity from what they are before.

132. SECTION 48.—[STRIKING OUT INDORSEMENT.] The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

133. ILLUSTRATIONS OF THE FOREGOING RULE.—The commonest application of the rule enacted in this section is where one who has indorsed a negotiable instrument which has thereafter been in other hands and indorsed by others, takes it up and desires to get payment from prior parties to the instrument. If he were obliged to trace his present title fully he would have to prove every indorsement subsequent as well as prior to his own; but as the subsequent indorsements are of no interest to him, since he cannot exact payment from a party to the instrument who is subsequent

to himself, he may strike out the subsequent indorsements and establish a chain of title merely to his first holding of the instrument. By operation of law he is remitted to the same position which he originally occupied. Or we may suppose before the instrument ever came into his hands there were several indorsements upon it, the first of which was a blank indorsement. On taking up the instrument he may write over the blank indorsement a special indorsement to himself, and strike out all later indorsements. In this case, however, he is releasing from liability indorsers whom he might have charged since their names were on the instrument before he became a holder. Therefore he will not adopt the course suggested unless he is sure of being able to get reimbursement from parties to the instrument prior to those whose names are struck out.

134. SECTION 49.—[TRANSFER WITHOUT INDORSEMENT; EFFECT OF.] Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

NOTE.—In the Illinois and Missouri Acts, after the word "right," the first sentence continues as follows: "to enforce the instrument against one who signed for the ac-

commodation of his transferor, and the right to have the indorsement of the transferor, if omitted by accident or mistake. But for the purpose," etc. In the Colorado Act, at the end of the first sentence, there is added, "if omitted by mistake, accident or fraud." In the Wisconsin Act, at the end of the section, there is added: "When the indorsement was omitted by mistake, or there was an agreement to indorse made at the time of the transfer, the indorsement, when made, relates back to the time of the transfer."

135. ILLUSTRATIONS OF CASES OF TRANSFER.—Negotiable paper can only be negotiated in accordance with the custom of merchants; that is, if payable to order it must be properly indorsed; but all contract rights for the payment of money may be assigned and therefore one who transfers order paper without indorsement is the assignor of a chose in action. The transferee is an assignee, and as we have said his rights differ from those of an indorsee only in this that he takes subject to personal defences or equities in favor of the maker and other parties bound by the instrument. It may be added that the same results which this section enacts for the transfer of the paper would follow if the holder of the paper without transferring it merely agreed for value to do so; with this exception, however, the assignee could not demand payment from the parties bound on the instrument until he secured it and was able to surrender or cancel it. He would, however, have the right to demand the instrument from the holder who had agreed to assign it to him. Until he actually got possession of the paper, his right would always be subject to

be cut off by an indorsement by the assignor to a holder in due course. One may suppose also a transfer with delivery but without indorsement and without value. Such a transfer would operate as a valid gift irrevocable by the transferor, but the donee not being a holder in due course would be subject to any defences which were available against his donor.

136. SECTION 50.—[WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT.] Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

137. COMMENT ON SECTION 50.—If a party primarily liable becomes a holder of the instrument at or after maturity, it is discharged and can not be reissued. It does not extinguish an instrument, however, for anybody except a party primarily liable to become the holder even though he does so after maturity. The final sentence of the section expresses a result that has been established in order to avoid what is called circuity of action; it is circuity of action where a plaintiff is allowed to recover money from a defendant who can thereafter recover it back from him. If A is the second indorser of an instrument, and after two subsequent indorsements becomes again the holder of the instrument, if he were allowed to sue the fourth or the

third indorser on dishonor of the instrument by the maker, the fourth or third indorser on being compelled to pay, could recover from him as second indorser. To avoid this round-about result, the law denies a recovery by the holder against the third and fourth indorsers in the case supposed.

Article IV—Rights of the Holder

138. SECTION 51.—[RIGHT OF HOLDER TO SUE; PAYMENT.] The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

139. HOLDER HAS A RIGHT AGAINST EVERY PARTY.—We may here consider the amount which the holder of a bill or note may recover upon it if it is not paid at maturity. In the first place, the holder has a right against every party to the instrument for the full amount of it, if the parties secondarily liable are once duly charged; that is, on a note for \$1,000, the holder, having charged the indorsers, may sue the maker and every one of the indorsers for \$1,000 each, and get a judgment against every one of them for that amount. He will then try to collect as best he can. Of course, the holder cannot actually collect on his judgments more than the amount due him and keep it. If he should collect anything in excess of that which is due he will hold the excess in trust for the last party on the instrument.

140. IT IS IMMATERIAL WHAT THE HOLDER PAID FOR A NOTE.—It makes no difference what the holder paid for the note. If he is the owner of it and a holder in due course he may recover the full face of \$1,000, even though he bought it for \$500, and though originally it was obtained by fraud on the part of the payee, but if the price paid was very small, it is often some evidence in connection with other circumstances that the purchaser did not buy in good faith—that he suspected if he did not know that there was something wrong with the instrument.

141. SECTION 52. — [WHAT CONSTITUTES A HOLDER IN DUE COURSE.] A holder in due course is a holder who has taken the instrument under the following conditions: (1) That it is complete and regular upon its face. (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact. (3) That he took it in good faith and for value. (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

NOTE.—In the Wisconsin Act there is the further subsection: (5) "That he took it in the usual course of business."

142. IMPORTANCE OF BEING A HOLDER IN DUE COURSE.—As we have seen personal defences are not good against a holder in due course (Section 57) and are good against one who is not a holder in due course (Section 58). It is therefore

vital to determine when a holder falls within this designation.

143. **THE INSTRUMENT MUST BE COMPLETE AND REGULAR.**—The first requisite is that the instrument is complete and regular on its face. That, you see, makes every holder chargeable with what appears on the face of the instrument. If a holder does not in fact draw the inference of irregularity from something on the instrument which really shows irregularity, it is the holder's own fault. He is, in the language that is sometimes used, chargeable with constructive notice of whatever appears on the document itself. Thus it may indicate from its form that a fraud is being perpetrated on a corporation or partnership or the beneficiaries of a trust. Furthermore, the instrument must be complete when negotiated, in order to entitle one to the designation of a holder in due course. That to some extent changes the law from what it was prior to the enactment of the Negotiable Instruments Law. No one who takes a blank check can now be a holder in due course. Of course, if the instrument is given with authority to fill it out in a certain way, one who took the instrument and filled it out in that way would be protected, and one who took the instrument in blank and himself filled it out in accordance with the original authority would be protected (Section 14), but one who took it as a blank instrument, relying on the statement of the payee that it might be filled out for \$1,000, when in fact the orig-

inal authority was only to fill it out for \$100, would not be able to collect more than \$100. He is not a holder in due course, and is bound by the original authority given by the maker. It does not, however, make an instrument incomplete and irregular that it is not dated, states no place of payment or does not state that it is for value received. (Section 6.)

144. **KNOWLEDGE THAT BLANKS HAVE BEEN FILLED.**—This suggests an inquiry as to the position of one who knows that the instrument was originally issued in blank, but who took it after the blank was filled in. Generally speaking, notice of any defence is enough to prevent one from being a holder in due course, and we should suppose it would be so here, although it seems a pretty harsh result. Suppose a blank check is brought to us and the payee says he has authority to fill it out for \$1,000, and he does so and then offers it to us for \$1,000. When we take it, it is complete and regular on its face, but we had notice that it was not so when it was issued. We think under the statute it is a somewhat doubtful question whether one who thus took that instrument could be called a holder in due course. We should think it was too doubtful for it to be safe to take it in spite of the provision in section 14 that the person in possession of a negotiable instrument wanting in any material particular, has a *prima facie* authority to fill up the blanks. One may then ask, what would be the position of a

bank which took an instrument, a check from the payee, knowing that the payee had just filled out the blank? We think the answer must be the same as in the case where the check is purchased. If knowledge of a blank space is a notice of an infirmity in the instrument, it would seem as if the bank ought not to pay under those circumstances. We find it hard to believe, however, that a bank would not be protected that did so.

145. A HOLDER IN DUE COURSE MUST TAKE BEFORE MATURITY AND WITHOUT NOTICE OF PRIOR DISHONOR.—A second requisite stated in Section 52 for a holder in due course is becoming holder before the instrument was overdue and without notice that it had been previously dishonored, if such was the fact. The last clause refers to two cases; first, that of demand paper, which may in fact have been presented and dishonored though the purchaser has no reason to suppose so, and second to the case of a time bill of exchange which has been presented before maturity for acceptance and acceptance refused. That is a dishonored bill, and any one who takes it with knowledge of that fact would not be a holder in due course; but one who takes it in ignorance of the previous dishonor and before maturity would be a holder in due course.

146. GOOD FAITH AND VALUE.—The third requisite of Section 52 is that the holder must have taken in good faith and for value. Those words

need no explanation other than the definition of value, previously given, and a statement in regard to the requirement of good faith. Good faith means, not such care as would be regarded as reasonable business prudence, but simply honest belief in the validity of the instrument, however careless it may have been to have such an honest belief. (Section 56.)

147. NOTICE OF INFIRMITY.—The fourth requisite of Section 52 is, perhaps, almost necessarily included in the one just referred to,—that of good faith. The fourth requisite is that at the time of negotiation, the holder had no notice of any infirmity of the instrument or defect in the title of the person negotiating it. A holder in due course was frequently called, before the passage of the act, a bona fide purchaser for value before maturity, and that really expresses the whole idea, unless, perhaps, the requirement of completeness and regularity on the face of the instrument. Until the contrary is shown, every holder is presumed to be a holder in due course. (Section 59.)

148. PAYEE MAY BE A HOLDER IN DUE COURSE.—The payee may be a holder in due course as well as a subsequent holder. This often becomes important. In a recent case a married woman made out a check payable to a man to whom she owed a debt. She gave this check to her husband with directions to hand it to the creditor in payment of her debt. Now the husband owed this

same creditor a debt on his own account, and he handed that check to the creditor in satisfaction, not of his wife's debt, but of his own. The creditor preferred, when the difficulty was discovered, to treat the check as a payment of the husband's debt, for the wife was responsible, financially, and the husband was not, and the court held the creditor was entitled to do this. Though he was the payee of the check and not the purchaser, he was a holder in due course, having taken it with all the requirements just discussed.

149. **POSTDATED INSTRUMENT.**—An instrument which is antedated or postdated is not on that account irregular on its face, and one may be a holder in due course of such an instrument. (Section 12.)

150. **SECTION 53.**—[WHEN PERSON NOT DEEMED HOLDER IN DUE COURSE.] Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

151. **WHAT IS A REASONABLE TIME FOR A CHECK OR NOTE.**—A check must be presented within a reasonable time after its issuance. What is a reasonable time depends on the time necessary to collect, and undoubtedly the customary mode of collection would be regarded as reasonable, even though that was not the quickest. The customary mode is not always the shortest method. In regard to notes, the rule is the same as in re-

gard to checks,—a reasonable time from the issue of the note, only what is a reasonable time for a check is not necessarily a reasonable time for a note.

152. SECTION 54.—[NOTICE BEFORE FULL AMOUNT PAID.] Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

153. RIGHTS OF ONE WHO HOLDS A NOTE FOR COLLATERAL.—Contrast with the case of a purchaser, a case where the holder at maturity holds the note merely for security. In that case if the parties liable on the note—the maker and indorsers, or any of them—have a defence good against the person who deposited the note as collateral, the holder for collateral can only collect the amount for which he holds the note pledged; that is, if a note for \$1,000 was deposited to secure a claim of \$500, the holder could collect only that sum, because that satisfies his claim, if as we are supposing, the man who deposited it as collateral was not a holder in due course and could not himself have collected anything from the parties liable on the instrument. If the man who deposited the note as collateral, however, was a holder in due course, then the lender who holds the note as collateral will collect it in full and will pay over to the man who de-

posited the note the excess over and above the indebtedness.

154. SECTION 55.—[WHEN TITLE DEFECTIVE.] The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

NOTE.—In the Wisconsin Act there is added at the end of the section: "And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care."

155. ABSOLUTE AND PERSONAL DEFENCES.—Under this section we will consider the absolute and the personal defences to obligations on negotiable instruments. We have already considered certain cases of lack of genuineness of a signature owing to forgery or lack of authority.

FRAUD AS AN ABSOLUTE DEFENCE.—Still another case of lack of genuineness may arise in certain cases of fraud. Generally fraud is only a personal or equitable defence, but in certain instances it may be an absolute or real defence. Such a case is where the maker of the instrument did not know and had no reasonable cause to know that he was making a negotiable instrument at all. If a man knows he is making such an instrument, even though he is induced to make it by fraud, it is his

instrument and he is bound by it. But suppose by clever sleight of hand a fraudulent person gets another to sign a note who is under the belief that it is a receipt or letter of introduction or something of that sort which he is signing. Here you will notice that the signer has never assented to make a negotiable instrument. It is not a case where he is induced to assent by false representations. There he assents to do the thing but here he never assented to sign a negotiable instrument at all; and therefore he may assert that it is not his note, unless he was guilty of such negligence as precludes him from subsequently asserting the truth that it was not his instrument.

156. **LACK OF TITLE.**—A second absolute defence is lack of title in the holder of an order instrument. Lack of title in an instrument, payable to bearer, as we have said, does not prevent the holder from giving a good title, but lack of title in an instrument payable to order does. Even though it be conceded that the maker of a note or drawer of a check be liable, he has a right to pay the real owner of the instrument. If he should pay any one who did not have title, the payment would not be a discharge of the instrument, and he would have to pay over again. Therefore he has a defence against anybody who has not title. Consequently, a holder, to recover on an order instrument, must make out not only the defendant's liability on the instrument to some one, but also his own title to it.

157. A HOLDER'S BANKRUPTCY DEPRIVES HIM OF TITLE.—Another case of lack of title is where the holder of negotiable paper has become bankrupt. The National Bankruptcy Law vests in a bankrupt all the property which the bankrupt had at the time of his bankruptcy. We suppose that statute vests an absolute title even to negotiable paper, so that one who innocently bought negotiable order paper from a bankrupt to whom it was payable after his bankruptcy would not be protected. The trustee in bankruptcy would have become the owner of it and the bankrupt himself would have no better right to it than if he held under a forged indorsement. If, however, the instrument was payable to bearer, under the general rule applicable to such paper, the bankrupt holder, though having no title himself, could transfer a good title to a holder in due course.

158. INCAPACITY. — INFANCY. — Another absolute defence to a negotiable instrument good against any holder is the incapacity of a party. The instrument may be binding as to some parties, but on account of incapacity others may not be liable. The commonest kind of incapacity is infancy, that is, minority of a party. It is a good defence even against a holder in due course that the party sued is a minor. It is not a good defence that a prior holder was a minor when he indorsed the instrument. Though the minor may avoid that transfer as against the transferee, until and unless he does so,

it is a good transfer, and the maker will be bound to pay the transferee. (Section 22.)

159. LUNACY.—Somewhat similar to infancy is the case of lunacy. It is possible that in some cases of lunacy the transaction may be absolutely void and incapable of ratification; but whether this is so or not, lunacy is generally held a good ground for treating the obligation of an insane person on the instrument as voidable, even when it is in the hands of a holder in due course.

160. HUSBAND AND WIFE.—Formerly a married woman could make no valid contract by negotiable instrument or otherwise. This complete disability is now generally done away with, but it is still true, in most States, that a husband and wife cannot make a valid contract with one another, and therefore neither of them can make a valid obligation from one to the other on a negotiable instrument. A note by a husband to wife or wife to husband is, therefore, worthless, even in the hands of a holder in due course. Similarly, an indorsement from one to the other will not be a valid transfer and will create no obligation. A check from one to the other deserves a moment's attention. Such a check does not create any obligation between the drawer and payee, but it is a valid order to the bank by the drawer to pay the payee. Accordingly, if the bank does so, the payment is good. In some States married women are under the further disability that they cannot become sureties for their husbands. In

such States, therefore, there would be an absolute defence to any suit against a married woman based on an obligation which she signed as surety for her husband.

161. **ILLEGALITY.**—A fifth absolute defence is raised by certain kinds of illegality. Some transactions are so illegal that even in the hands of a holder in due course a negotiable instrument given in pursuance of them will not be valid. Under the statutes of some States, usury is a defence of that sort. In other States, there is no general usury law.

162. **SUNDAY LAWS.**—The Sunday law of many States is rather troublesome at times. One must remember in connection with this matter that it is the delivery of a negotiable instrument, not the date which it bears on its face, which fixes the time when it takes effect. Accordingly, a note dated on Sunday but delivered on Monday is good. On the other hand, a note dated on Saturday or Monday but actually delivered on Sunday is bad, though a subsequent holder, who took such a note in ignorance of the day when it was delivered, might rely on the form of the instrument—that is, on the fact that it was dated on Saturday or Monday—and be protected. The maker would be estopped to deny that it was delivered on Saturday or Monday since the date may properly be assumed to be the true date. (Section 11.) A note, however, which was dated on Sunday, and which was delivered as a matter of fact also on Sunday, would seem to be bad in the hands

of any holder, for any holder has notice by the date of the time of probable delivery, and therefore ought to be on the lookout for that.

163. **ILLEGALITY AS A PERSONAL DEFENCE.**—One who is not a holder in due course is subject not only to the absolute defences already considered, but also to what are called personal or equitable defences, and these may now be considered. Some, but not all of them, are briefly summarized in Section 55. First, illegality. As we have previously said earlier, illegality may sometimes be an absolute defence good against everybody, but it is more commonly a personal defence good only against the original party to the illegality and those subsequent holders who are not holders in due course. Some of the commonest kinds of illegality are wagering, including under this designation such stock gambling or gambling in securities, as is prohibited by law. Usury is, in most States, where there are usury laws, a personal defence. The sale of goods contrary to law may give rise to a personal defence to a note given for the price. Instruments given as bribes to any person subject to a public or private duty to induce him to disregard that duty would also be another illustration. It would make no difference whether the official bribed were a public officer, a corporation official, a trustee, an employee of a firm, or an individual. So any transaction which involves a breach of fiduciary duty or official duty, whatever its nature, would be illegal,

and a negotiable instrument which formed part of the transaction would be subject to a personal defence.

164. FRAUD.—A second personal defence, and perhaps the commonest, is fraud. As already stated, fraud may be an absolute defence. If the fraud prevented a party to the instrument from knowing that he was signing a negotiable instrument, he would have an absolute defence, unless he was grossly negligent. On the other hand, if he knew that he was signing a negotiable instrument, but was induced to do so by false representations, the defence would be merely personal. Suppose a note was a perfectly good note as between the maker and payee, but was obtained from the payee by fraud, the indorsement of the payee being obtained by fraudulent representation. Payment is then demanded by the fraudulent indorsee. The instrument would be technically discharged by such a payment; but if the maker knows of the fraud he would make himself a party to it if he should pay the fraudulent indorsee, and would be liable to pay again to the defrauded payee. This sort of case may put a bank in rather a hard place. Suppose a check drawn on a bank is presented by an indorsee and the bank believes and is informed by the payee that that check was obtained by fraud. If in fact it was obtained by fraud and the bank refused to pay, its defence would be good against any assertion or complaint by the drawer of the check that his check had been dishonored; but

suppose there was, as it turned out, no fraud, then if the bank had refused payment of the check, even temporarily, it would run a risk of subjecting itself to a suit for damage by its customer, the drawer. Nevertheless, there is nothing that can be done except to refuse temporarily and file a bill for interpleader against the payee and the indorsee, asking the court to determine which of the two parties is entitled to the instrument.

165. DURESS.—A defence somewhat similar to fraud is what is known in law as duress. This was at first confined by law to cases where a person was compelled to sign an instrument under imminent fear of bodily harm or imprisonment, but the defence has now been extended beyond that. There are many kinds of duress which do not threaten the person under duress himself with immediate harm. For instance, a case arose in New Jersey which presented these facts: a husband threatened to blow his brains out if his wife did not sign an instrument, and brandished a pistol so that his threat seemed at least plausible, and thereby induced his wife to sign a paper. She would have a personal defence against an obligation entered into in that way. So a threat to injure a child or to injure another person may have even more effect than a threat to injure the person himself whose signature is demanded. The test today is, was such pressure put upon the signer as to prevent him from being really a free agent in the matter? It is not duress, however, to threaten

to enforce one's legal rights unless an instrument is signed. For instance, a threat by a creditor to sue, or a threat to attach the debtor's property unless the debtor signed a note, would not be such duress as to create even a personal defence.

166. **LACK OF DELIVERY.**—Lack of delivery is a personal defence. Until the passage of the Negotiable Instruments Law it was an absolute defence, but now, by virtue of Section 16, it is only a personal defence. Suppose you make a note payable to bearer and put it in your safe, intending to deliver it the next day. It is stolen and transferred before maturity to a purchaser for value without notice. He can hold you liable upon it, although you never delivered the instrument, and perhaps wrote it as a mere writing exercise. And similarly (a case that is more likely to happen) if you have a note payable to yourself, indorse it without delivering it, put it in your safe, and, as before, it is stolen. A purchaser for value from the thief not only becomes the owner of the note, able to enforce it against the maker, but he can hold you liable on your indorsement as an indorser. Lack of delivery is therefore not an absolute defence. It is, however, a personal defence good against the original payee and any one with notice that the instrument was not delivered or was delivered only for a special purpose which has not happened. For instance, if you deliver a note to a note broker to dispose of, and he does not dispose of it in accordance with the authority you gave him,

you have a personal defence against him if he tries to collect it, or against any one who knew of the circumstances, because of the original understanding that the instrument should be delivered as a binding obligation only on certain terms.

167. **LACK OF CONSIDERATION.**—Another personal defence is lack of consideration. We have already referred to that subject in text paragraphs 17 to 22 in connection with the liabilities of different parties on negotiable instruments, and it is not necessary to repeat what has been said before. It is enough to say here that if there is not the consideration or value which the law requires for the obligation of any party to an instrument, he has a defence as against anybody but a holder in due course because of this lack of consideration or value. The commonest kind of signature without consideration is that of an accommodation party. An accommodation party, therefore, even though the maker of the instrument, cannot be sued by the holder if the holder was the accommodated party. There is one peculiarity, however, about the defence of accommodation which distinguishes it from all other personal defences. An accommodation party has no defence merely because the holder took the instrument from the accommodated party with knowledge that it was given for accommodation. (Section 29.) Generally, as we have seen, one who takes with a notice of a personal defence from one who was subject to that defence, becomes himself

subject to the defence in the same way as the man from whom he took it. One who takes from a fraudulent payee knowing of the fraud can no more collect than the fraudulent payee, but one who takes from an accommodated payee knowing of the accommodation can, if he gives value, collect from the accommodation maker. And the reason for this distinction is plain: the accommodating party lent his signature for the very purpose of having it negotiated, and therefore it would be highly improper not to allow one who has relied on the signature to recover upon it, even though he knew perfectly well that it was for accommodation. In buying the instrument or lending money on it, he is doing exactly what the accommodating party expected him to do.

168. **FAILURE OF CONSIDERATION.**—A defence somewhat similar to lack of consideration and yet a different one is what is called failure of consideration. This arises where an instrument is given for some prospective or promised return which is not given. For instance, suppose a note is given in return for a promise to deliver goods later. There is no lack of consideration, strictly speaking, for this note, because there was a promise to deliver the goods, and a promise is sufficient consideration for the note. But if the goods are not delivered when the time comes there is failure of consideration; the thing expected was not given; the promise has not been kept. And thus where there is failure

of consideration the person who was to give the consideration cannot recover because he has failed to give it, and any holder who took the note, knowing that the consideration had failed, will similarly be unable to recover. Perhaps as common an illustration of this defence as any arises where a note is given for the price of a chattel which is warranted and there is a breach of the warranty. In many States, that entitles the buyer of the chattel to rescind the contract, to give back what he has bought, and to demand his discharge from the obligation of the note. Accordingly, if he tenders back the inferior chattel he has a defence against any action on the note brought either by the payee, who sold the chattel and warranted it, or by anybody taking from that payee who is not a holder in due course.

169. DISCHARGE BEFORE MATURITY.—Still another personal defence is discharge of an instrument before maturity in any way except by the cancellation of it. We have already seen in paragraph 66 that cancellation of a negotiable instrument, even before maturity, is an absolute discharge of it. Any kind of discharge by payment, release, or accord and satisfaction is a good defence after maturity, because after maturity there can no longer be a holder in due course. Every one who takes after maturity will take subject to that defence of payment or release or accord and satisfaction. But payment, or release, or accord and satis-

faction of a negotiable instrument before maturity is only a personal defence. You may have a holder in due course after the payment or release, and this holder in due course can sue again on the instrument and recover in spite of the fact that the maker has already paid once. The moral, of course, is plain, that if an attempt is made to settle a negotiable instrument before it is due, it must be accompanied by a cancellation of the instrument; that is, some physical mutilation or destruction of the paper sufficient to show that it is no longer a valid obligation.

170. **ALTERATION.**—Another personal defence is alteration, of which we have already spoken in connection with absolute or real defences. The maker of an altered note has an absolute defence against the note in its altered form, but has a personal defence only against it in its original form, that is, a holder in due course can enforce the note according to its original tenor. Nobody can enforce it according to its altered tenor.

171. **SET-OFF AS A PERSONAL DEFENCE.**—Another personal defence may arise from a right of set-off. Suppose the maker of a note has on another account a claim against the payee which the maker of the note could set off against the claim of the payee if the payee should sue on the note. Now suppose the payee indorses the note. Can the maker use this right of set-off against the indorsee who has purchased the note, or must the maker pay the

note in full to the holder and then try to collect his own claim from the original payee? It is held generally in this country, to depend upon whether the indorsee was a holder in due course. If he is, he takes free of the right of set-off. If, however, he did not give value, or if he knew of the claim in set-off, or purchased after maturity, generally in this country the maker of the note may assert his right of set-off against the indorsee. In England he cannot do that. It is said there, that the right of set-off is not really an equity relating to the note, and that it is a separate claim good only against the original payee, which should not travel with the note and should not under any circumstances be good against anybody but the payee of the note.

172. PAROL EVIDENCE RULE.—This concludes the list of personal defences with the exception of one thing, which partakes somewhat of the nature of a personal defence, although it is a more extensive matter than a mere personal defence. This is what is called the Parol Evidence Rule. The Parol Evidence Rule in substance is this: when any party enters into a written contract the terms of the contract must be determined wholly from the writing. This rule does not apply simply to bills and notes, it applies to any written contract, and it forbids parties to written contracts attempting to prove that the writing is not really what they agreed, or that they agreed to something more or something less than the writing. Nothing is commoner than

for parties to attempt that sort of wriggling out of a written contract. The party to the writing who finds his feet pinched by some of its provisions frequently in good faith thinks it was not what the parties originally meant. The Parol Evidence Rule requires the court to enforce the writing, and not what the parties testify they meant or would have written if they had thought about it, or anything of that sort. Not infrequently the Parol Evidence Rule works a certain injustice, because it may be true that the writing did not contain all that the parties agreed, or contains something a little different from what they bargained for. But the defence of the rule is that it makes more certain the real agreement between the parties in so many more cases than those where it works injustice, that on the whole it works well.

173. ILLUSTRATIONS OF INADMISSIBLE PAROL EVIDENCE —Now how does the Parol Evidence Rule hit negotiable instruments? Not infrequently a party to an instrument will attempt to set up some agreement which he asserts he made in regard to the note. A common agreement of this sort is an agreement that the note need not be paid at maturity but may be extended. That sort of agreement if made contemporaneously with the note cannot be proved. The note by its terms says it is payable on such a day. It would contradict the terms of that writing to set up and prove an agreement that it was not to be paid then, but that it was

to be paid at some later day. So if a note is positive in terms it would not be permissible to show that it was agreed between the parties that the note should be paid only upon a certain contingency. That sort of agreement is frequently made, but it is invalid unless made part of the writing.

174. **SUBSEQUENT ORAL AGREEMENTS ARE VALID.**—We must call attention, however, to this fact, that the Parol Evidence Rule relates only to agreements made at or before the time when the writing was executed. One may make a subsequent oral agreement which, if it has sufficient consideration, will not infringe upon the Parol Evidence Rule and will be binding. The reason of this distinction between subsequent agreements and agreements made at or before the time of the writing is this: the theory of the Parol Evidence Rule is that when parties reduce their agreement to writing, *prima facie* they include in that writing everything relating to that matter. But the next day or the next week they may change their minds, and they have a right to make a new agreement. There is nothing in the fact that they made a writing yesterday which would lead any one to suppose that that writing was going to be good permanently; but it is fair to suppose that at the time they made it, it expressed their whole intention in regard to the matter. Consequently, these contemporaneous agreements which we have suggested, relating to the same subject-matter as the note and inconsis-

ent with its terms, cannot be shown, but let us put some cases of matters which may seem to come pretty close to the Parol Evidence Rule and which nevertheless, may be shown.

175. ILLUSTRATIONS OF WHAT MAY BE PROVED.—It may be shown that indorsers are not liable in the order in which their names appear on the paper. It is not regarded as a contradiction of the instrument to show that the first indorser really wrote his name low down on the back of the paper and the second indorser wrote his higher up. Neither is it an infringement of the Parol Evidence Rule to show that one of the signers signed for the accommodation of another; that does not affect the liability of the accommodating party to the holder of the note. If he is a maker he is liable as a maker, even though he makes the instrument for accommodation. The fact that the instrument was never delivered as a negotiable instrument may be shown. It may be shown that the date which the instrument bears on its face, though such a date is *prima facie* proof of the date when the instrument was delivered, was not really the date of delivery. It may be shown that the instrument when delivered was either antedated or postdated. If the language is ambiguous also the law allows evidence of the surrounding circumstances and other matters tending to show what the ambiguous words really meant. In any kind of contract the Parol Evidence Rule does not prevent a party from showing that

the instrument took its present form because of fraud or duress, and certain cases of gross mistake also may be shown, and the enforcement of the contract relieved against. It has sometimes been thought inconsistent with the principle of the Parol Evidence Rule that an acceptance of a bill of exchange should not be required to be written on the face of the instrument. It is the custom of merchants, of course, when a bill is accepted to write it on the bill, but an acceptance may legally not only be written in that way but may also be written on a paper other than the bill itself. That is so provided in section 151. But such an acceptance only binds the acceptor in favor of a person to whom it is shown and who on the faith thereof receives the bill for value. Furthermore, even before a bill is drawn an unconditional promise in writing to accept the bill is deemed an acceptance in favor of any one who on the faith of the writing receives the bill for value.

176. RELATION OF PAROL EVIDENCE RULE TO PERSONAL DEFENCES.—Now how does the Parol Evidence Rule have anything to do with personal defences and holders in due course? Only in this way: that a purchaser who is a holder in due course unquestionably will have a right to rely on the terms of the instrument as they appear in the writing. Whether a collateral agreement does or does not infringe upon the Parol Evidence Rule, it is important to determine whether it may

be shown as between the original parties to the instrument; but in either case it cannot be shown as against a holder in due course if the terms of the instrument do not indicate the defence.

177. SECTION 56.—[WHAT CONSTITUTES NOTICE OF DEFECT.] To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

178. COMMENT ON SECTION 56.—There was formerly considerable litigation upon the question whether one who took an instrument for value and in good faith, but negligently, was a holder in due course. In other words—is it the equivalent of actual notice of a defence to prove that if the holder had not been negligent he would have learned of the defence in question? The statute establishes that negligence is not the equivalent of notice. Knowledge of such facts is necessary, as would indicate actual bad faith.

179. SECTION 57.—[RIGHTS OF HOLDER IN DUE COURSE.] A holder in due course holds the instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

NOTE.—In the Illinois Act defenses of fraud, circumvention and gaming within the meaning of certain local statutes

are excepted and remain as before the passage of the Act, absolute defenses. In the Wisconsin statute also some exception are made to the enactment of freedom from defenses.

180. COMMENT ON SECTION 57.—It might not be easy to say what this section meant by “defect of title” or “defences available to prior parties among themselves,” if we did not have the well settled law existing prior to the adoption of the statute to aid in construing it. With this aid it is clear that what is meant is that the holder in due course takes free of personal defences or equities though he does not take free of absolute defences. We have already considered what defences fall under each heading.

181. SECTION 58.—[WHEN SUBJECT TO ORIGINAL DEFENCES.] In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defences as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

182. COMMENT ON SECTION 58.—One who is not a holder in due course is (1) a person who has not given value; that is, a donee; and (2) a person who has notice of a defence. We have seen that a holder may give partial value and will, therefore, become a holder, in due course, to the extent of the value of which he has given. It is also conceivable that a holder may take with notice of a defect amounting to only a partial defence to the instru-

ment. The last sentence in Section 58 imposes an important qualification on the rule that notice of a defect subjects one who takes the instrument to a defence. After an instrument has once come into the hands of a holder in due course, all personal defences or equities in favor of prior parties are thereupon cut off. As the holder in due course might enforce the instrument in spite of such equities, he may give his own rights to whomsoever he will. He will not lose his rights if he finds out the defence subsequent to his acquisition of the instrument, and if he seeks to sell the instrument to another he may tell the purchaser the facts and the purchaser may safely buy. Although he will know there was an equity, he will also know that the equity has been cut off. This does not injure the party who had a personal defence. It is no more burdensome to him to pay a subsequent purchaser than it would be to pay the first holder in due course. Therefore, when any personal defence is raised, the question is not simply whether the present holder is a holder in due course but whether at any time subsequent to the delivery of the obligation, enforcement of which is sought, the instrument has come into the hands of such a holder.

183. SECTION 59.—[WHO DEEMED HOLDER IN DUE COURSE.] Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the

burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

184. COMMENT ON SECTION 59.—This section relates merely to the burden of proof. Prima facie the holder of an instrument is a rightful holder, and a holder for value. When, however, it has been shown that an equity existed, the burden is then on the holder to establish that this equity has been cut off by the acquisition of the instrument at some time by a holder in due course.

Article V—Liabilities of Parties

185. SECTION 60.—[LIABILITY OF MAKER.] The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse.

186. LIABILITY OF A DRAWEE, ACCEPTOR AND MAKER.—The drawee until he accepts a bill is not liable on the instrument, but he may be liable by virtue of a collateral contract with the drawer. For instance, if a bank fails to honor a check drawn upon it when the drawer has funds, the bank will be liable not on the check and not to the holder of the check, but to the drawer of the check on his implied contract with the bank when he became a depositor that the bank would honor

such checks as he should draw within the limits of his account. The acceptor when he accepts becomes the party primarily liable on the instrument, and of course the maker of a note is similarly liable. (Section 60.) The normal and only proper way of accepting a bill is in writing on the bill signed by the drawee, but the statute holds a written promise by the drawee though not on the bill binding upon one to whom it is shown and who on the faith of it receives the bill for value. (Sections 134, 135.) The statute (Sections 139-142) distinguishes general acceptance from qualified acceptance. A holder is entitled to a general, that is, an unqualified acceptance, and if the drawee refuses to give it, may treat the bill as dishonored (Sections 142-149), but the holder may, if he chooses, take an acceptance varying from the tenor of the bill in amount, place, time or otherwise. If he does so the acceptor will be liable according to the terms of his acceptance—not according to the terms of the bill as originally drawn. The drawer and indorsers will be discharged since they never agreed to be responsible for such a qualified acceptance; but they can assent to be so responsible, and if after notice of the qualified acceptance they do not express dissent to the holder, they will be deemed to have assented. (Section 142.)

187. SECTION 61. — [LIABILITY OF DRAWER.] The drawer by drawing the instrument admits the existence of the payee and his then

capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

188. **LIABILITY OF A DRAWER.**—The drawer of a bill orders the drawee to pay. He does not in words say, "And I promise to pay if the drawee does not," but he impliedly promises that by drawing the bill, and he may not only promise to pay the instrument if the drawee fails to pay it, but also if the drawee fails to accept it. A demand bill does not contemplate an acceptance, but a time bill (and in Massachusetts, New Hampshire and North Carolina a sight bill) does, and a drawer of such a bill promises in effect, "If this instrument is presented for acceptance it will be accepted, or if not, on due notice I promise to pay it; and, further, if it is not dishonored for nonacceptance and is presented for payment at the day of maturity, I promise that if it is not then paid, on due notice of that fact I will pay it." The holder of such a bill need not present it for acceptance unless he likes. He may wait until the day of maturity and then simply present it for payment; but if he presents it for acceptance and the instrument is not accepted, he must then give notice of dishonor, to the drawer, for

the drawer's obligation is conditional, not simply on the failure of the drawee to accept and to pay, but also on proper notice of such failure being sent to the drawer. The holder, after failing to give notice of dishonor for nonacceptance, cannot thereafter charge the drawer by presentment at maturity for payment, and giving notice of nonpayment. The drawer may expressly put other conditions limiting his obligation to pay the instrument, but that is not common.

189. SECTION 62.—[LIABILITY OF ACCEPTOR.] The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits,—(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) The existence of the payee and his then capacity to endorse.

190. ADMISSIONS IMPLIED BY DRAWING, MAKING OR ACCEPTING.—The drawer, the maker and the acceptor, by signing, admit the existence of the payee and his capacity to indorse the instrument. If he becomes incapacitated to indorse after the instrument is drawn, however, that may be set up as a defence. The acceptor further admits not only the existence of the drawer but the genuineness of his signature and his capacity and authority to draw the instrument. That is a matter that has given rise to a good deal of litigation. The result of the cases prior to the Negotiable Instruments Law was generally the same as is now

stated in the statute. The reason for the result as generally given is that the drawee is bound to know the signature of the drawer. Accordingly, if a holder for value presents a check or presents a bill of exchange to the drawee, and the drawee pays it, the money cannot be recovered, although the signature is forged. The drawee must look out for that before he pays, and an acceptor similarly must be on his guard when he accepts the instrument. So a bank when it certifies a check becomes absolutely liable to pay it to a holder in due course, even though the drawer's signature was forged. (Sections 23, 60-62.)

191. SECTION 63. — [WHEN PERSON DEEMED INDORSER.] A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

192. COMMENT ON SECTION 63.—There have been many cases in the past raising the question of the liability intended to be assumed by one who placed his name on negotiable paper in an unusual way. Most of these cases it is true related to what are called irregular indorsements in the following section of the statute. But it is possible for one to become a party to an instrument as a guarantor. So one who signs on the back of negotiable paper may intend to assume the liability of a maker

rather than an indorser. It is possible under the Negotiable Instruments Law to give effect to any such intentions if they are clearly manifested, but this section of the statute provides a rule of presumption applicable where it is not made perfectly clear that another meaning is intended.

193. SECTION 64.—[LIABILITY OF IRREGULAR INDORSER.] Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:— (1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

NOTE.—In the Illinois Act sub-section (1) and (2) are as follows: (1) If the instrument is a note or bill payable to the order of a third person, or an accepted bill, payable to the order of the drawer, he is liable to the payee and to all subsequent parties. (2) If the instrument is a note or unaccepted bill payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

194. ANOMALOUS OR IRREGULAR INDORSEMENTS.—Ordinarily an indorsement is both a transfer and a special kind of guarantee, but it may be one only of these things or it may be neither. Thus, an indorsement without recourse is a transfer but is not a guarantee. An anomalous indorsement is not a transfer but it is a guaranty. So

an indorsement of an instrument negotiable by delivery, though unnecessary to transfer the instrument, is effective to create the liabilities of an indorser. (Section 67.) And there is one kind of indorsement that is neither a transfer nor a guarantee, but merely a receipt. Suppose a check is presented by the payee at the bank on which it is drawn. The bank asks for the payee's indorsement. Now that signature will not enable the bank under these circumstances to sue the indorser, even though the drawer had in fact no funds or even though the drawer's signature was forged; it is simply an acknowledgment or receipt for the money. But the anomalous or irregular indorsement though not a transfer is a guaranty of the same sort that an unqualified regular indorsement is. It is called anomalous or irregular because it is made by one who is not a party to the instrument nor a holder of it. A makes a note payable to bank B and gets C to sign at the time of the transaction as an indorser for security. C was never, of course, a holder of that instrument, and consequently the indorsement is not a transfer. The same practical result might be reached and often is reached by a regular indorsement. A might have made that note payable to C and then got C to indorse it to the bank. Under the transaction in that form the bank would as before have the signatures of A and C, but here C would be a regular indorser, as he was the payee of the instrument. Before the passage of the Negotiable

Instruments Law an anomalous indorser was held in some States a joint maker of the instrument, in others varying kinds of obligations were held to be created by such an indorsement. This led to all kinds of trouble; but that is changed by the Negotiable Instruments Law, which provides in Section 63 that where a person not otherwise a party to an instrument places thereon his signature in blank before delivery, he is liable as an indorser to parties who take the instrument subsequently; and he is entitled to the same diligence on the part of the holder in order to charge him as is required in order to charge a regular indorser. It is broadly provided also in Section 64 that if a person places his signature on an instrument otherwise than as drawer or acceptor he is bound as an indorser, unless he clearly indicates by appropriate words another intention.

195. SECTION 65.—[WARRANTY WHERE NEGOTIATION BY DELIVERY, ET CETERA.] Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:— (1) That the instrument is genuine and in all respects what it purports to be; (2) That he has a good title to it; (3) That all prior parties had capacity to contract; (4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

196. **WARRANTIES.**—The law of warranty in regard to negotiable instruments is based on the same principle as the law of warranty in the sale of chattel property. If a seller induces a buyer to purchase by making a representation of the title or the quality of the goods sold, he becomes a warrantor of the truth of his statements. Had he merely expressed an opinion instead of making a positive affirmation he would not have been so liable. The law also recognizes that even though no express affirmation is made, the very act of offering goods for sale carries with it an implied representation. One who purports to sell goods impliedly represents that he is the owner, and, therefore, impliedly warrants his title. So we find it recognized in the law of negotiable paper that one who sells it impliedly warrants his title and warrants that the instrument is what it seems to be; namely, a genuine instrument; and that the parties who purport to have signed have actually signed and have the capacity to sign. There is no warranty, however, implied of the solvency of the parties, nor is there a warranty that none of the parties has a defence to the instrument unknown to the seller.

197. **SECTION 66.**—[**LIABILITY OF GENERAL INDORSER.**] Every indorser who indorses without qualification, warrants to all subsequent

holders in due course: (1) The matters and things mentioned in subdivision one, two and three of the next preceding section; and (2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

198. **LIABILITIES OF AN INDORSER.**—An indorser's main obligation is, of course, an undertaking that on presentment a bill shall be accepted or shall be paid at maturity, or both, and similarly he engages that a promissory note shall be paid at maturity on presentment, subject in both cases to proper notice being given of dishonor. He also makes certain warranties in regard to the instrument itself, and even one who indorses without recourse, or who transfers by mere delivery paper payable to bearer, makes certain warranties, the most important of which is that the instrument is genuine and is what it purports to be. Accordingly, if there is any forged signature on negotiable paper, one who indorses without recourse would be liable to the purchaser for such damage as the forgery caused. One who sold such an instrument without any indorsement would also be liable to the same extent. Furthermore, it is warranted by the trans-

ferrer, whether an indorser or not, that he has title to the instrument, and that all the prior parties had capacity to contract. If the instrument is simply transferred without indorsement, the seller also warrants that he has no knowledge of any fact which would impair the validity of the instrument and render it valueless. The provision as to capacity to contract does not apply to the sale of bonds of corporations or public securities, but the provision as to genuineness would apply to any negotiable instrument which is sold. (Section 65.) Indeed, the law is the same on this point when any personal property is sold.

199. SECTION 67.—[LIABILITY OF INDORSER WHERE PAPER NEGOTIABLE BY DELIVERY.] Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

200. SECTION 68.—[ORDER IN WHICH INDORSERS ARE LIABLE.] As respects one another indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

201. ILLUSTRATIONS OF THE PROVISIONS OF SECTION 68.—Indorsers, as between themselves, are bound in a fixed order. That is generally the order in which the names appear on the paper, but conceivably it might not be. Thus, a

second indorser might place his name above a prior indorsement, but that would not render him a prior indorser. So, also, several indorsers might be jointly liable. They may all have indorsed as co-sureties. In that case, as between one another, they would have to share the loss equally; but generally as between themselves indorsers are liable in the order in which their names appear. The last indorser can sue the preceding one and so on (Section 121), but so far as the holder is concerned this order makes no difference. He can charge all the indorsers at once on dishonor of the instrument, and he can bring an action or actions against all of them at the same time. (Section 84.) He may sue any one or all of them before he sues the party primarily liable, or he may sue the indorsers at the same time that he sues the party primarily liable; and the holder may get judgment against all of these parties for the full amount of the bill or note, the only limit to his rights being that he can collect on his judgments only the full amount of the instrument.

202. **SECTION 69.—[LIABILITY OF AN AGENT OR BROKER.]** Where a broker or other agent negotiates an instrument without endorsement he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

203. **COMMENT ON SECTION 69.**—Though the law of undisclosed principal does not apply to obligations on negotiable paper (the rule as to them

being that only the party named on the paper as contracting is bound whether he be in fact principal or agent) the obligations named in Section 65 are extrinsic and collateral, not on the paper itself. Accordingly if an agent does not disclose his principal when he sells a negotiable instrument he would be personally liable as a warrantor, but if the agent was acting within his express or implied authority the principal also would be liable.

Article VI—Presentment for Payment

204. SECTION 70.—[EFFECT OF WANT OF DEMAND ON PRINCIPAL DEBTOR.] Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

NOTE.—In the Illinois Act after the word “instrument” are inserted the words: “except in the case of bank notes.” In the Kansas, New York and Ohio Acts after the word “maturity” are inserted the words: “and has funds there available for that purpose.” In the Wisconsin Act all of the first sentence after the words “on the instrument” is omitted.

205. PRESENTMENT UNNECESSARY TO HOLD PRIMARY PARTY.—The party primarily liable may be sued without any previous demand on the maturity of the instrument. This is true even

though such party does not know who is the holder and the instrument is not made payable at a particular place, so that tender of payment is impossible. It is also true though the instrument is payable on demand. Demand paper is payable without a demand, paradoxical as it may seem.

Presentment, before the passage of the Negotiable Instruments Law, in some jurisdictions at least, was necessary to charge the party primarily liable if the instrument was payable at a particular place; but that is not so now. Even under the Negotiable Instruments Law, however, if presentment was in express terms required by the instrument presumably it would have to be made. It would be possible to write an instrument with such a condition, but that is not done in the ordinary forms of notes.

206. PRESENTMENT IS NECESSARY TO CHARGE PARTIES SECONDARILY LIABLE.—In order to charge parties secondarily liable, on the other hand, presentment to the party primarily liable is always necessary unless the contrary is provided. It is perfectly possible here, also, to provide in the instrument contrary to the general rule. An indorser may agree to be liable without presentment to the maker.

207. TENDER.—Damages may be stopped or limited at any time by tender. Tender stops interest and stops a right to any additional damages subsequent to the time of tender. It is sometimes supposed that tender discharges a debt, but, of course,

that is not so. What is tender? Strictly, tender is an offer of an amount of legal tender money equal to the indebtedness of the person tendering. Nothing but legal tender is sufficient, but unless the creditor requests legal tender, or rather unless he objects to the form in which tender is made, an offer of any ordinary medium of payment, such as a certified check, would be sufficient. The creditor has a right to say, "I want legal tender offered to me," but if he does not say that the certified check will do as well. Tender ordinarily implies an offer to the creditor in person, but not necessarily. Suppose an instrument is payable at a particular place. If the debtor goes to that place ready and willing and able to offer payment, but the creditor is not there, that is a good tender. Accordingly, if a note is payable at a bank, and the maker of the note has on deposit at that bank on the day of maturity an amount sufficient to meet the obligation, that serves as an automatic tender. If the creditor comes to the bank he can get it; if the creditor does not come, the mere fact that the money is at the place waiting for him will stop interest. (Section 70.) The tender will not only stop interest and further damages, but it will also operate as a discharge of subsequent parties on the instrument. It will not discharge the debt as far as the person tendering is concerned, nor as far as any prior party is concerned, but as to subsequent parties it does in effect amount to a discharge. (Section 120 [5]). The reason is that since

the holder, when the tender was made, might have had his money if he had wanted it, it is unfair, when the only reason he does not get paid is his own refusal or neglect, that he should thereafter charge a subsequent party. In order to be valid, the tender must be sufficient in amount.

208. **KINDS OF INTEREST.**—Not only are there questions arising in regard to the principal sum which is due upon a note, but there are questions in regard to interest. Interest is of two sorts: the first is interest agreed upon by the parties, sometimes called conventional interest, which means interest contracted for; the second kind of interest is given by the law as damages irrespective of any agreement on the part of the parties. Another kind of charge which is somewhat like interest in its nature, though not exactly the same, consists of percentages allowed in lieu of what is called re-exchange, and we shall say a few words in regard to each one of these.

209. **CONVENTIONAL INTEREST.**—In the first place, conventional interest must be reserved in the note. Unless the instrument says something to the contrary the interest will run from the date of the instrument; that is so provided in section 17 of the statute. If the instrument is not dated, then interest will run from delivery, always assuming that the note provides for interest. A postdated or antedated note will get so much the less or more interest. If the note does not state how long the

interest is to run, as generally it does not, it will run until the note is paid. That seems obvious where the interest is as high or higher than the legal rate, but it is also true if the interest is lower than the legal rate. For instance, suppose a note payable in one year with interest at 5 per cent. is not paid at maturity. Had there been no interest mentioned in the note the interest from maturity would run at the legal rate which is generally 6 per cent. and it sometimes seems hard to the holder of such a note that he should be worse off in having an interest-bearing note, so far as the period after maturity is concerned, than a man would be who had a non-interest-bearing note; but that is the rule. The contract rate governs not only before maturity but after. When the note is reduced to judgment, however, the judgment will bear interest at the legal rate.

210. CONSTRUCTION OF AMBIGUOUS AGREEMENTS FOR INTEREST.—A note not infrequently reads simply, "with interest." That is understood to mean with interest at the legal rate. But sometimes this case is presented: there is a blank form used and the form reads, "With interest at —," and does not mention any rate, but leaves a blank, or reads "With — interest." In the first place, that is an incomplete instrument, and any one who takes it with those blanks in it will be obliged to find out at his peril what is the real authority to fill out the blanks. If the parties really

bargained for 5 or 3 per cent. interest, that is all the interest that can be recovered, and if they bargained that there should be no interest we presume that also would be provable and that no interest could be recovered. If the blanks were filled out before maturity and a holder in due course took the instrument, he would be entitled to recover on the instrument according to the way the blanks were actually filled out. We may suppose, however, that the parties when they made the note made no agreement as to interest,—said nothing about it; there would then be no evidence of the rights of the parties except what the note itself furnished. We suppose in that case interest at the legal rate would be allowed, though it has been argued that an instrument reading, “With interest at — per cent.,” or “With — interest,” until the blank is filled out, in effect says with interest at no per cent., or with no interest. It has been decided in one case, however, that the legal rate is the fair meaning.

211. INTEREST AS DAMAGES.—Now about interest recoverable as damages. It follows from what we have already said that such interest is recoverable only in case there is no agreement for interest in the note at all. In such a case interest at the legal rate runs from the maturity of time paper, and on demand paper runs from delivery.

212. CALCULATION OF INTEREST.—A question has been raised as to the calculation of interest. Interest is ordinarily calculated by business

and financial people on the assumption that there are three hundred and sixty days in the year. The result of that method of calculation is frequently that a little more interest is charged than is actually earned; that is, 1-360 of 6 per cent. is charged for each day instead of 1-365. This trivial inaccuracy in the calculation of interest ordinarily makes no difference, but it becomes of importance in certain States where usury laws forbid charging more than a given rate of interest, say 6 per cent. In a State where such a law prevails it might be usurious to charge interest calculated on the basis of three hundred and sixty days to the year, and probably as a matter of strict law, even where there is no usury law, if any one liable to pay interest insisted on having his interest calculated exactly on the basis of three hundred and sixty-five days in the year, so that he would pay only 1-365 of the annual rate for each day instead of 1-360, as commonly calculated, he would be entitled to make that demand. In a few States special statutes have been passed legalizing the ordinary method of calculating interest. Even without such statutes courts have generally concluded that "six per cent." as used in a usury statute means six per cent. as ordinarily calculated by business men.

213. RE-EXCHANGE.—There is one other kind of damages, damages given in lieu of re-exchange. That involves an explanation of what is meant by re-exchange. If a note is payable in one

city and there are half a dozen indorsers on it and the note is dishonored, the holder not only has a claim, after charging the indorsers, against every one of them for the amount of the bill, but also he has a right to the amount of the bill in the place where the instrument was payable. Now suppose the indorsers live in several other cities, as New York, Philadelphia and Chicago. The way that is supposed to be adjusted unless this method is changed by statute is this: the holder in the city where the instrument is payable has a right to draw a draft on the indorsers in New York, Chicago and Philadelphia for such an amount as will equal the face of the note if the draft were discounted in the place where the note was payable; that is, the amount of the draft would be the face of the note plus exchange on the places where the indorsers live. In lieu of that right to re-exchange, the statutes of many States provide that a certain per cent. on a negotiable instrument may be added in charging a party secondarily liable if he lives at a distance from the place where the instrument is payable, the percentage varying with the distance.

214. PROTEST FEES.—Protest fees also may be added as part of the damages due on an instrument, and become part of the obligation of all parties to it.

215. SECTION 71. — [PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON

DEMAND.] Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

NOTE.—In the Nebraska Act all of the section after the words “reasonable time after its issue” is omitted. In the Vermont Act instead of the last five words of the section are substituted: “after its issue in order to charge the drawer.”

216. DATE OF MATURITY IMPORTANT FOR THREE QUESTIONS.—The next question to determine is when an instrument is overdue. That is necessary for several purposes, and unfortunately under our law an instrument may not be overdue for all these purposes at the same moment. There is a good deal of confusion about overdue paper because these several questions which may arise with reference to overdue paper are not kept apart. The first and primary question in regard to when paper is overdue is, When can you sue the party primarily liable? The second question is, When can you give notice of dishonor to parties secondarily liable that the instrument has been dishonored at maturity? The third question is, When is the instrument subject to personal defences if purchased thereafter?

217. IN EUROPE OVERDUE FOR ALL PURPOSES AT THE SAME TIME.—Under the

practice on the continent of Europe, (see paragraph 321), of marking on the face of a bill the fact of its dishonor or its payment on presentment, the difficulties that beset our law in regard to this matter do not occur. The answers to each of these three questions on the continent of Europe will always be the same. As soon as there is a right of action against the maker then will always be the time to give notice, and thereafter the instrument will always pass subject to equities. But now let us see how it works in this country.

218. WHEN RIGHT OF ACTION ARISES IN THE UNITED STATES.—It is the rule in simple contracts that when a man contracts to do something on a given day he has until the last minute of that day to satisfy his obligation. That is true both of contracts to pay money and of contracts to do other things. If by a simple contract one agrees to pay \$1,000 on the 2d of January, he cannot be sued on that obligation until after the last minute of the 2d of January has expired, for until that last minute it is possible he may fulfill his contract. The result is that a right of action will not accrue on that contract until the 3d of January. That principle, unfortunately, has been applied rather generally to negotiable instruments. If a note is by its terms payable on the 2d of January the general rule is that no action can be begun against the parties until the 3d of January. The instrument is not overdue so far as the maker is con-

cerned until then. That is probably contrary to the theory and customs of bankers and merchants. The theory of bankers and merchants is that the maker of the instrument agrees that he will pay it on presentment on the 2d of January, that the maker is not entitled to the last minute of the day, that he must be ready at the beginning of the business day, and that whenever his creditor presents that instrument to him on that day he must pay it. Now the law in Massachusetts and Maine, unlike the law of most of the United States, has to some extent recognized this custom. It has recognized it to this extent: if there is an actual presentment on the 2d of January and dishonor, a right of action against the maker arises immediately in favor of the holder; he does not have to wait until the last minute of the day, and therefore does not have to wait until the 3d of January to sue. But it is law in Massachusetts and Maine, as it is elsewhere, that if presentment is not made on the 2d of January (and under the Negotiable Instruments Law there is in general no reason to make presentment except to charge the indorsers, and therefore a note without indorsers need not be presented) the maker is not liable to suit until the 3d of January. The day of maturity is also affected by Sundays and holidays. If the day of maturity falls on Sunday or a holiday, the instrument is not payable until the next business day, and time instruments payable on Saturday must also be presented on the next business day. (Section 85.)

So much for an instrument being overdue for the purpose of a right of action against the party primarily liable.

219. WHEN INSTRUMENT IS OVERDUE FOR OTHER PURPOSES.—Secondly when is an instrument overdue for the purpose of charging indorsers? For that purpose it is everywhere overdue as soon as it is presented and dishonored on the day of maturity (Sections 71, 83, 102), and thirdly when it is overdue for the purpose of letting in equities. Everywhere but in Massachusetts, so far as it has been decided, the instrument is overdue for the purpose of letting in equities only on the day after that on which it falls due, that is, on the 3d of January. A purchaser on the 2d of January, unless he had notice that the instrument had been presented and dishonored, would be a holder in due course. One in Massachusetts who purchases on the 2d of January is not a holder in due course, unless Section 52 of the Negotiable Instruments Law has changed the law previously existing in that State.

220. WHERE AN INSTALLMENT OR INTEREST IS UNPAID.—One may suppose some rather special cases in regard to overdue paper; for instance, suppose an instrument payable in installments and one installment overdue and unpaid. Is that instrument, as a whole, dishonored? The answer to that is, yes. On the other hand, if merely interest is due and unpaid the note is not dishon-

ored. A case arose in Wisconsin where the instrument provided that if the interest was unpaid the note should thereupon become due. The interest was unpaid and the note was purchased before the day it was due by its original terms, but the Wisconsin court held that the purchaser was not a holder in due course. He had bought after maturity, since the non-payment of interest made the whole note due.

221. WHEN RIGHT OF ACTION ACCRUES ON DEMAND PAPER.—A more troublesome question than that concerning the day of maturity of time paper is the day of maturity of demand paper, and here again we must make the distinction clear between these several questions of when a right of action arises, when the instrument is subject to equities, and when notice may be given to indorsers. On demand paper a right of action against the maker arises immediately as soon as it is delivered. By the terms of the paper it might be supposed that demand was a prerequisite to such a right of action, and on theory it ought to be, but as has been said, in this country and England it is not. (Section 70.)

222. MATURITY OF DEMAND PAPER TO CHARGE INDORSERS.—The holder may make a demand on the maker within a reasonable time after the issue of the instrument for the purpose of charging indorsers, the instrument maturing at any time within that limit that the holder wishes to pre-

sent it. (Section 71.) He may demand payment at once of the party primarily liable, and on his refusal to pay and notice to the indorser, he will acquire a right of action against the latter.

223. WHAT IS A REASONABLE TIME FOR A BILL OF EXCHANGE.—Section 71 of the statute provides that in case of a bill of exchange payable on demand, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. That provision is clearly a blunder. The rule before the passage of the Negotiable Instruments Law was that a demand bill of exchange might be negotiated as many times as the holder chose before presentment, provided that an unreasonable time never elapsed between one negotiation and the next; that is, it could be kept in motion, and so long as it was kept in motion it would not matter what was the total addition of the short periods between the several indorsements. But this section of the Negotiable Instruments Law says that it is all right if presentment is made within a reasonable time after the last negotiation. Apparently, therefore, we may have a demand bill of exchange and hold it for five years and then negotiate it, and everything will be all right if the bill is presented within a reasonable time after the last negotiation.

224. SECTION 72.—[WHAT CONSTITUTES A SUFFICIENT PRESENTMENT.] Presentment for payment, to be sufficient, must be

made:—(1) By the holder, or by some person authorized to receive payment on his behalf. (2) At a reasonable hour on a business day. (3) At a proper place as herein defined. (4) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

225. PRESENTMENT FOR PAYMENT.—Presentment for payment is, as we have said, necessary to charge parties secondarily liable. It may be asked when presentment must be made, to whom it must be made, by whom it must be made, and the place where it must be made.

226. TIME OF PRESENTMENT.—As to the time, it must be at maturity of the instrument, if the instrument is a time bill, and if it is a demand instrument presentment must be made within a reasonable time. (Section 71.) The hour of the day when presentment is made must be reasonable. (Section 72 [2].) What is a reasonable hour of the day may depend on who is the drawee. In Chicago a case arose where it appeared that it was the business custom of banks to remain open between 3 and 6 o'clock, having some one in charge for the purpose of receiving presentment of instruments which had been rejected at the Clearing House. It was held in view of this custom that a presentment within these afternoon hours was presentment at a reasonable hour of the day. Unless, however, it was the custom of the banks to stay open after 3 o'clock

it would not be reasonable to seek to present to the bank, as the party primarily liable on the instrument, after 3 o'clock in the day. (See also Section 75.) But if the drawee was a business man in the same city, and the normal hours of his business extended until 5 or 6 o'clock, presentment as late as that might be permissible.

227. BY WHOM AND TO WHOM PRESENTMENT MUST BE MADE.—Now by whom must presentment be made? It must be made, as is provided in Section 72 of the act, by the holder or some person authorized by him to receive payment. It must be presented to the person who is primarily liable on the instrument, or to the drawee of the bill of exchange or check, if there has been no acceptance of the bill or certification of the check. If the person primarily liable on the instrument is not at the place where presentment should be made, but somebody else is, payment should be demanded from him. He may be the authorized agent of the person primarily liable. If there are joint parties primarily liable, it must be presented to both (Section 78) unless they are partners, in which case presentment to one is enough. (Section 77.) If the party primarily liable is dead presentment must be made to his executor or administrator. (Section 76.) In any of these cases, however, if a place of payment is specified in the instrument, presentment at that place on the day of maturity is sufficient.

228. SECTION 73.—[PLACE OF PRESENT-

MENT.] Presentment for payment is made at the proper place:—(1) Where a place of payment is specified in the instrument and it is there presented. (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented. (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment. (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

229. IMPORTANCE OF SPECIFYING A PLACE OF PAYMENT IN NEGOTIABLE INSTRUMENTS.—It is worth while to call attention to the importance of having negotiable instruments always made payable at a particular place. This simplifies the duty of the holder. All he has to do is present the instrument there. It is also an advantage for the debtor, for all he has to do to make tender in order to stop interest is to have money at the place where the instrument is made payable. If there is no place of payment named, each party is at a disadvantage, for the debtor can never tell who may be holder at maturity; he has to depend on receiving notification of that, which may not be given him, and therefore he is unable to stop interest because the note may be negotiated to he knows not whom. The creditor is at a similar disadvantage if no place of payment is named, for he cannot tell where to make presentment.

230. SECTION 74.—[INSTRUMENT MUST BE EXHIBITED.] The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

231. PRESENTMENT INVOLVES SHOWING THE INSTRUMENT.—Presentment implies showing the instrument. It is not enough to demand payment. It is requisite for the creditor to say, in effect, "Here is the instrument on which you are liable and which I am ready to surrender on receiving payment." A New York case arose a short time ago of an attempted presentment over the telephone, and the party primarily liable refused payment. The question was whether the parties secondarily liable could be charged on that presentment. A lower court in New York held that they might be, that the showing of the note was waived by the party primarily liable. We are not sure that the decision was right. Presentment is for the benefit, not of the party primarily liable, but of the parties secondarily liable. The parties secondarily liable have a right to say, "We will not pay unless there has been proper presentment." Now it seems that it can hardly be proper presentment unless the instrument is actually brought within reach of the party primarily liable and in effect offered to him. If presentment is good over the telephone from one bank to another in New York City, why is it not good as between New York and

Chicago, without sending the note to Chicago at all, where it is payable?

232. SECTION 75. — [PRESENTMENT WHERE INSTRUMENT PAYABLE AT BANK.] Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

NOTE.—The Nebraska Act ends with the words “banking hours.”

233. COMMENT ON SECTION 75.—What is meant by “banking hours” depends upon the custom of the place of payment. Often a bank transacts the business of paying negotiable paper of certain kinds after the hour when ordinary deposits are received and checks cashed. Thus, as has been said, in Chicago it appeared to be the custom for banks to remain open between three and six o’clock P. M. for the purpose of meeting certain demands. A presentment of negotiable paper which was a demand of this sort was held seasonable when made between these hours.

234. SECTION 76. — [PRESENTMENT WHERE PRINCIPAL DEBTOR IS DEAD.] Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

235. **COMMENT ON SECTION 76.**—It is important to be sure that the person primarily liable is dead. Reasonable cause to believe him dead is not enough; and in an action against a party secondarily liable, death must be proved. Moreover, though death excuses presentment, it does not excuse the requisite notice of dishonor to parties secondarily liable.

236. **SECTION 77.**—[**PRESENTMENT TO PERSONS LIABLE AS PARTNERS.**] Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

237. **LIABILITY OF PARTNERS AND OTHER OBLIGORS.**—Partners are jointly liable in most jurisdictions, (in a few they are liable jointly and severally) but there is this difference between joint obligors who are partners, and other joint obligors. Each partner is agent for the firm in all matters appropriate for the transaction of the firm's business. This includes the payment of negotiable paper; therefore presentment to one is in effect presentment to all.

238. **SECTION 78.**—[**PRESENTMENT TO JOINT DEBTORS.**] Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

239. **COMMENT ON SECTION 78.**—Though

this section is headed in the Statute—"Presentment to joint debtors," the heading is too narrow, for the section is applicable not simply to cases of joint liability, but to cases of persons severally liable or jointly and severally liable. If the parties primarily liable are liable severally, or jointly and severally, each one may be sued separately; whereas if they are jointly liable, all must be sued jointly. But so far as charging parties secondarily liable is concerned, the situation is the same in all these cases. The indorser or drawer ought not to be held liable until it has been made manifest by due presentment that no one of the parties primarily liable will pay the instrument; and this can only be ascertained by presentment to all of them. A case may be supposed where strict presentment is not possible on the day of maturity to each of the parties primarily liable; they may live at places distant from one another, and the instrument may not be payable at a particular place, but the provisions of Section 81, would excuse necessary delay.

240. SECTION 79.—[WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE DRAWER.] Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

241. EXCUSES FOR NON-PRESENTMENT.—In certain cases non-presentment is excused. Sometimes it is excused altogether, as is provided in Sections 79, 80 and 82, and sometimes

it is excused merely temporarily, as provided in Sections 81 and 147. It is excused altogether, the statute provides, wherever the party secondarily liable, who might complain of non-presentment, had no reason to expect that the instrument would be paid if presented. The common illustration of such a case is that of a drawer who has no funds or agreement for credit with the drawee. Such a drawer is liable without presentment to the drawee. Even though the holder was ignorant of the facts and supposed the drawee was bound to pay, failure to present being due simply to negligence, the result is the same.

242. SECTION 80.—[WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE INDORSER.] Presentment for payments is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

243. ACCOMMODATION PAPER.—The principle of the last section finds particular application also in case the instrument was made for the accommodation of the party secondarily liable, and therefore he himself ought to pay it, for it is the understanding, where paper is made for the accommodation of one who is secondarily liable on the instrument, that he shall save harmless the party who became primarily liable on the instrument, as matter of accommodation, and shall himself pay the instrument at maturity. Such a person secondarily

liable on the instrument, whether he is a drawer (Section 79) or an indorser (Section 80) has no right to complain if the instrument is not presented to the party who is primarily liable.

244. SECTION 81.—[WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.] Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

245. TEMPORARY EXCUSES FOR PRESENTMENT.—Presentment may be excused temporarily. This will be true whenever circumstances occur without the fault of the holder which make presentment at maturity impossible but do not make it permanently impossible. (Sections 81, 147.) A common illustration of this would be where the maker of a note died and no executor or administrator had been appointed. That would excuse delay in presentment until the appointment of such an official, but when the cause of the delay ceased to operate, presentment would have to be made with reasonable diligence.

246. SECTION 82.—[WHEN PRESENTMENT MAY BE DISPENSED WITH.] Presentment for payment is dispensed with: (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made. (2) Where the drawee is a fictitious person. (3) By waiver of presentment, express or implied.

247. **INABILITY TO FIND PERSON PRIMARILY LIABLE.**—Presentment for payment is also excused where, after reasonable diligence, the presentment cannot be made, as, for instance, if it is impossible, with reasonable diligence, to find the person primarily liable in order to make presentment to him. Again, where the party primarily liable is a fictitious person, it is obvious there can be no presentment. (Section 82.)

248. **WAIVER OF PRESENTMENT.**—Another case and an important one is where presentment is waived. The waiver may be expressed or implied. (Section 82.) Sometimes it is made at the time when the obligation of the drawer or indorser is undertaken. If waiver is made at this time, the consideration which supports this party's obligation also supports the agreement to waive presentment. Waiver of presentment may also be made after the drawer or indorser has signed, but prior to the day of maturity. In such a case the holder is justified in relying on the waiver and refraining from making presentment. There is what is called in the law a kind of estoppel in that case, since the holder's failure to make the presentment has been due to his reliance on the waiver. But the law has gone even farther than this. Suppose the instrument has actually passed maturity and no presentment has been made, and therefore the party secondarily liable has been wholly discharged. Even then a waiver of presentment may be effec-

tively made by him. In this case it is a waiver of a past default. That is an exceptional sort of case, for generally an agreement to give up a right requires consideration in order to make it valid, but here the party secondarily liable gives up his right to rely on the lack of presentment as a ground of discharge without any consideration. In order, however, to have a waiver of this last sort effective, the party who waives presentment must do so with knowledge of the facts; that is, he must know that the time for presentment has elapsed, and that there has been a failure to make due presentment. But it is not necessary for the validity of such a waiver that the party making it should know his legal rights; that is, it is not necessary that he should know that the lack of presentment had discharged him. It is only necessary that he should know the facts from which a lawyer would know that he had been discharged.

249. OTHER ILLUSTRATIONS OF EXCUSES FOR PRESENTMENT.—We will give one or two other illustrations of cases where it was claimed that presentment had been excused. In one case the president of a corporation indorsed the note of the corporation and before the maturity the maker was adjudged a bankrupt, one of the acts of bankruptcy of the bankrupt maker being the written admission of the indorser, the president of the corporation, that the corporation was unable to pay its debts and was willing to be declared a bankrupt.

It was held on these facts that it was not necessary to present the note to the corporation—the maker—in order to charge the indorser. He had no reason to expect that the note would be paid; indeed, he had every reason to know that it would not be. In another case the indorsers of a note had assured the holder that it could not be paid at maturity, and they knew that the maker, again a corporation, had not the money to pay. It was held these indorsers were not discharged by the failure to present at maturity. They had virtually represented to the holder that there was no use in making presentment, and after they had taken that stand they could not complain that the holder relied upon it. Again, a firm made a note and one of the partners indorsed it. Shortly before maturity the indorser, in speaking to the holder regarding a general assignment for the benefit of creditors which the firm was contemplating, told the holder that neither the firm nor he could pay the note at maturity, and no presentment was made, and here again it was held that there was a waiver. A still stronger case is where the indorser assured the holder before maturity that he, the indorser, would be responsible for principal and interest when it was due and would look after the collection. In short, any statement before maturity made by a party secondarily liable, the natural effect of which would be to induce the holder to refrain from making presentment to the party primarily liable, either because it was of no use to

do so or because it was unnecessary to do so, since the party secondarily liable was going to pay it any way, will excuse presentment.

250. **DISTINCT AGREEMENT NECESSARY FOR WAIVER AFTER MATURITY.**—But when it comes to a waiver after maturity, then you must have either a distinct promise to pay the note or a distinct agreement to waive it. The difference between the situation after maturity and before is, that after maturity the holder has already lost his rights by failing to make presentment at maturity, and in order to revive them a clear intention to pay is necessary.

251. **SECTION 83. [WHEN INSTRUMENT DISHONORED BY NON-PAYMENT.]** The instrument is dishonored by non-payment when—(1) It is duly presented for payment and payment is refused or cannot be obtained; or (2) Presentment is excused and the instrument is overdue and unpaid.

252. **COMMENT ON SECTION 83.**—Dishonor is important as one of the steps essential in order to charge parties secondarily liable. It is not important otherwise, for as we have seen so far as parties primarily liable are concerned, a right of action accrues to the holder though the instrument has not been dishonored on presentment.

253. **SECTION 84.—[LIABILITY OF PERSON SECONDARILY LIABLE, WHEN INSTRUMENT DISHONORED.]** Subject to the provisions of this act, when the instrument is dis-

honored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

254. COMMENT ON SECTION 84.—The words “subject to the provisions of this Act” in this section, refer to the necessity of notice of the dishonor. As will be seen, parties secondarily liable can not usually be held unless prompt notice is given of the dishonor.

255. SECTION 85.—[TIME OF MATURITY.] Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due [or becoming payable] on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

NOTE.—The words in brackets [or becoming payable] have been inserted for the sake of clearness. They are found in the Kansas, Massachusetts, Minnesota, Missouri, New Hampshire, New York and Virginia Acts. This section having twice used the word “payable” then uses the words “falling due.” This has raised doubts in the minds of some where Friday is a legal holiday and paper matures on Friday. These words are inserted to remove any possible doubt. Sight drafts are excepted from the abolition of days of grace in Massachusetts, North Carolina and New Hampshire. The provision of the section in regard to Saturday is omitted in Arizona, Kentucky, Vermont and Wisconsin.

256. GRACE AND HOLIDAYS.—There are

no days of grace now in States where the Negotiable Instruments Law is in force (except on sight drafts, payable in Massachusetts, New Hampshire or North Carolina). Sundays and holidays are included in the count as intermediate days, that is, it does not make any difference how many Sundays and holidays there may be within the thirty days, but if the thirtieth day falls upon a holiday then the instrument is payable the next succeeding business day. The rule is otherwise where days of grace are concerned. If the last day of grace falls on a holiday, the instrument is due on the next preceding business day, for days of grace are never extended beyond three days. This principle is still important where the Negotiable Instruments Law is not in force, and also in regard to sight-drafts in the three States above mentioned.

257. SECTION 86.—[TIME; HOW COMPUTED.] Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

258. COMMENT ON SECTION 86.—In considering when an instrument has matured we must consider separately instruments payable on time and instruments payable on demand. In calculating the period for the latter the statute provides that the first day shall be excluded and the day of

payment included. For instance, on a note dated the 2d of January, payable in thirty days, you do not count the 2d of January in figuring the time, but you do count thirty days beginning with January 3, and the thirtieth day will be the day of payment. It would, of course, make no difference if you included the 2d of January and excluded the day of maturity. The important thing is that you must not include both or exclude both.

259. SECTION 87.—[RULE WHERE INSTRUMENT PAYABLE AT BANK.] Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

NOTE.—This section is omitted in Illinois, Nebraska and South Dakota, and has been repealed in Kansas. In Minnesota the section is retained but instead of the words "it is equivalent" are substituted "it shall not be equivalent."

260. DOMICILED NOTES.—It was a disputed question in the common law whether making a note payable at a bank was equivalent to an order on the bank to pay. The better view was in accordance with the present provision of the statute that this did amount to an order, and therefore made such a note (which was sometimes called a domiciled note) in effect a bill of exchange drawn on the bank. The coupons on bonds are frequently made payable in this way. In some jurisdictions, however, there has been hostility to this principle, and sometimes it was argued that making an instrument payable at a bank only gave authority to the bank to make pay-

ment, but did not order it so to do. Others argued that there was neither order nor authority. The omission of this section of the statute in a few States, leaves the matter in somewhat dubious condition in those States. By Section 196 of the Negotiable Instruments Law, in the absence of an express provision on any point, the rule of the law merchant applies, and as it is somewhat uncertain what the rule of the law merchant on this matter is, there is chance for litigation.

261. SECTION 88.—[WHAT CONSTITUTES PAYMENT IN DUE COURSE.] Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

262. PAYMENT IN DUE COURSE.—We have discussed in connection with personal defences the rights of holders in due course, that is, purchasers for value in good faith before maturity and without notice; but a bank is as much interested in payment of instruments in due course as it is in regard to purchases of them in due course. In general, the rules as to what is payment in due course are the same as the rules in regard to what is purchase in due course. In other words, one who pays under the same circumstances in regard to notice and value and good faith as a purchaser who purchases in good faith for value and without notice, will be protected in the same way. But in one

respect a person who pays in due course stands in a better position than one who purchases in due course; or, rather, payment in due course is a little wider in one respect than purchase in due course. One is not a purchaser in due course who buys after maturity, but one who pays after maturity an instrument on which he is liable is as much protected as if he paid at the instant of maturity, and the reason for the distinction is plain. Nobody needs to buy paper after maturity unless he likes, but the maker of a note, from whom payment is demanded a year after maturity, is just as much bound to pay that note as if payment had been demanded promptly. It is therefore paying in due course to pay when payment is demanded, even if that be long after maturity. A bank will accordingly pay a check even though it is not presented within a reasonable time. Whether there is any limit to this principle may perhaps be a question. Perhaps a bank would not without inquiry pay a check that was issued several years previously; certainly not unless it felt pretty well satisfied that everything was all right. But so far as the statute (Section 88) and the decisions go, no limit seems to have been set to the right of the parties liable on an instrument to pay after maturity, and a long time after. The position of a bank or a drawee who has not accepted the instrument is of course a little different from the position of one who has actually made himself liable on the instrument,—as the maker of a

note or the acceptor of a bill, or a certifying bank which has certified a check. As to such a person there seems to be no period short of the Statute of Limitations in which payment may not be demanded rightfully, and therefore no time beyond which the party liable may not properly pay.

Article VII—Notice of Dishonor

263. SECTION 89.—[TO WHOM NOTICE OF DISHONOR MUST BE GIVEN.] Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

264. NOTICE OF NON-PAYMENT NECESSARY TO CHARGE SECONDARY PARTIES. —After presentment has been duly made, if the party primarily liable pays, of course the parties secondarily liable are excused. If the party primarily liable does not pay, then it is further necessary that the parties secondarily liable shall be notified, or at least that proper diligence shall be exercised in order to charge them. (Section 89.) This principle applies to all parties secondarily liable, even to the drawer of a check. By Section 186 the drawer of a check is not discharged by failure to present promptly, except to the extent that this delay actually works an injury; but presumably by a mistake

on the part of the draughtsman of the act, no special provision is made as to failure to give notice of dishonor of a check, and, therefore, by virtue of the general provision in Section 89 such failure discharges the drawer absolutely, whether he is injured or not. All indorsers, either on checks, ordinary bills of exchange or notes, must be notified. A joint maker need not be notified, even though he is a surety and that fact is stated in the note or known to the holder.

265. EXCUSE FOR PRESENTMENT DOES NOT EXCUSE NOTICE.—An excuse for making presentment does not excuse the failure to give notice. A waiver of presentment is construed as including a waiver of notice, but a mere excuse for not presenting does not excuse the notice. Indeed, frequently when presentment is excused the occasion is such that the indorser may particularly want notice. Thus if presentment cannot be made because the party primarily liable cannot be found, then the indorser ought to be notified of that so that he may, if he wishes, endeavor to find the missing party.

266. SECTION 90.—[BY WHOM GIVEN.] The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right of reimbursement from the party to whom the notice is given.

267. BY WHOM NOTICE SHOULD BE GIVEN.—Notice may, of course, be given by the holder. But it may also be given by any one who acts on behalf of the holder. Even though he is not at the time an authorized agent of the holder, the latter may ratify subsequently the assumption of agency. Not only may the notice be given by or on behalf of the holder, but by or on behalf of any party to the instrument who might be compelled to pay the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. Let us give an illustration. Suppose a note made by A and indorsed by B, C and D, respectively,—first, second and third indorsers. D, if compelled to pay, will have a right of recourse against C and B. It is therefore important for D that B and C should receive due notice. Accordingly, D may notify B and C, and the notice that D thus gives will be as effective as if it were given by the holder. Similarly, C might notify B, but C could not effectively notify D, because even if C is compelled to take up the paper he will have no right of reimbursement from D, and therefore it is nothing to him whether D is charged or not. B cannot effectively give notice to anybody for the same reason, for if he is compelled to pay, there is no party who is secondarily liable against whom he would have any recourse.

268. SECTION 91.—[NOTICE GIVEN BY AGENT.] Notice of dishonor may be given by an

agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

269. COMMENT ON SECTION 91.—This section extends the ordinary principles of agency, since it allows notice to be given in the name of a party entitled to give notice though that party is not in fact the principal of the agent. A notice given by a notary in the name of the maker (who because he is the party primarily liable was not entitled to give notice) has, however, been held insufficient.

270. SECTION 92.—[EFFECT OF NOTICE GIVEN ON BEHALF OF HOLDER.] Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

271. COMMENT ON SECTION 92.—When a party secondarily liable is once charged by notice from the holder, any one who succeeds to the title of the holder succeeds to the benefit of the notice, and it makes no difference whether the subsequent holder succeeds to the title by purchase or because he is a prior party on the instrument and has been forced to take up the instrument. The holder, however, is not bound to charge any party whom he does not wish to. He may be satisfied to charge his immediate indorser feeling sure he can get payment from him. This indorser if he wishes recourse over against prior parties whom the holder has not

charged, must assume the burden of giving them proper notice. It is, obviously never safe to assume that a holder has charged all prior parties, so that any party secondarily liable when charged himself should promptly give notice to prior secondary parties.

272. SECTION 93.—[EFFECT WHERE NOTICE IS GIVEN BY PARTY ENTITLED THERETO.] Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

273. ILLUSTRATION OF SECTION 93.—As not only the holder but other persons, as we have seen, are entitled to give notice, the same principle is applicable to other persons as is laid down in the preceding section as applicable to the holder. That is, for instance, if notice is given to the drawer of a bill of exchange by the first indorser, the holder can rely on that notice, as can all parties subsequent to the drawer.

274. SECTION 94.—[WHEN AGENT MAY GIVE NOTICE.] Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder.

275. ILLUSTRATION OF SECTION 94.—

This provision is of some importance to banks for banks are often agents for collection. Thus, where the instrument has been dishonored when in the hands of an agent for collection, that agent may either give notice to the party liable on the instrument or he may give notice to his own principal, and if he gives such a notice to his principal within the period that is necessary as between holder and indorser, the principal will have the same time in addition for giving notice to the drawer and indorsers.

276. SECTION 95.—[WHEN NOTICE SUFFICIENT.] A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

NOTE.—Under the Kentucky Act, the notice must be written and signed.

277. FORM OF NOTICE.—What sort of thing is a notice? In the first place, the notice may be oral as well as written, or partly oral and partly written. If written, it need not be signed, but a holder should always give notice in writing and sign it. He would be foolish, also, not to keep a copy of the writing. This is not because these things are legally necessary, but to have ready means of proof. The notice should properly contain a sufficient description to identify the instru-

ment, and should state that it has been dishonored either by non-acceptance or non-payment. A mistake in the description of the instrument, however, does not invalidate the notice, if the party secondarily liable is not in fact misled, as he would not be if there was no other note on which he was bound. It is well enough to state in the notice that the party secondarily liable is looked to for payment, but that is not necessary because it is implied from the mere circumstances of giving notice.

278. SECTION 96.—[FORM OF NOTICE.] The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

279. KNOWLEDGE IS NOT EQUIVALENT TO NOTICE.—A rather hard case presents these facts: a notice of dishonor and an envelope containing it were addressed to the second indorser, but they were delivered to the first indorser who read the notice. It was held, nevertheless, that he was not charged. The case brings out the important point that knowledge on the part of one secondarily liable that there has been presentment and dishonor is not a substitute for notice. We suppose the reason is that a notification, although it may simply contain a statement of the fact that the instrument has been dishonored, impliedly contains notice that the holder looks to the party secondarily liable for

payment, and mere knowledge from outside sources that the instrument has been dishonored does not necessarily indicate to the party secondarily liable that the holder is going to look to him for payment.

280. SECTION 97.—[TO WHOM NOTICE MAY BE GIVEN.] Notice of dishonor may be given either to the party himself or to his agent in that behalf.

281. TO WHOM NOTICE MAY BE GIVEN. —Notice may be given either to the party secondarily liable himself or to his agent in that behalf, but here you must have a real agency, the scope of which includes receiving such notice, because there will never be any ratification of a notice given to one who purports to be the agent of a party secondarily liable though not such in reality. Persons secondarily liable will always be too glad to get out of liability to ratify. The question of what is a sufficient agency is rather an important one, especially in the case of a corporation. In a recent New York case a notice was left at the cash window of a hotel corporation, which was a party secondarily liable. It was held that that notice was not sufficient, as it did not in fact reach the hands of any person in authority. In a case of this sort it is oftener safer to send a notice by mail than to attempt to make a personal delivery, for in case of a notice sent by mail, if it is correctly addressed, the responsibility of safe arrival of the notice is on the person to whom it is addressed, whereas if the holder at-

tempts a personal delivery he must at his peril make a delivery to the right person.

282. SECTION 98.—[NOTICE WHERE PARTY IS DEAD.] When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

283. COMMENT ON SECTION 98.—This section provides a rule for a difficult situation. In many of these doubtful cases a cautious person will give notice in more than one way in order to make sure that he has done everything that could possibly be required.

284. SECTION 99.—[NOTICE TO PARTNERS.] Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

285. COMMENT ON SECTION 99.—As partners are agents for each other in the firm business, the rule stated in this section is a natural one, and the same rule would apply to other joint parties where one had authority to receive notice for the other, even though the parties were not partners.

286. SECTION 100.—[NOTICE TO PERSONS JOINTLY LIABLE.] Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

287. COMMENT ON SECTION 100.—The

reason why each party must receive notice is similar to the reason which requires presentment to each of several persons primarily liable. Each has his own interest to protect and should be given a chance to protect it.

288. SECTION 101.—[NOTICE TO BANKRUPT.] Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

289. COMMENT ON SECTION 101.—Though the statute permits notice to be given to either the insolvent, or to his trustee or assignee, the wise plan is to give notice to both.

290. SECTION 102. — [TIME WITHIN WHICH NOTICE MUST BE GIVEN.] Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

291. COMMENT ON SECTION 102.—A notice cannot be given until the instrument is actually dishonored. On the other hand it may be given on the same day that the instrument is dishonored. An ordinary debt may be paid by the debtor at any hour of the day when the debt falls due. The fact that the debtor has not paid in the morning, or has even refused to pay in the morning, does not put him in default. He may pay in the afternoon; but a party primarily liable on a negotiable instrument

is bound to pay on presentment at any time during business hours. If an instrument is presented to him at 9 o'clock it is dishonored, although he says he will pay it at 10 o'clock. As we have seen he cannot himself be sued until the next day, but the parties secondarily liable may be effectively notified at once of the dishonor.

292. SECTION 103.—[WHERE PARTIES RESIDE IN SAME PLACE.] Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times—(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following. (2) If given at his residence, it must be given before the usual hours of rest on the day following. (3) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

293. ILLUSTRATION OF RESIDENCE.—The statute distinguishes in regard to notice between cases where the person to be notified resides in the same city or town as the person giving the notice and cases where he does not. If both reside in the same city or town notice, if given personally, must be given by the next day following, at a reasonable hour. If sent by mail it must be mailed in time to reach the party to be notified in the normal course of business on the next day following. It makes no difference that it does not reach him, all that is necessary is that it shall be mailed so that it

normally would. If given at the place of business it must be before the close of business hours; if made at the residence of the party to be notified, any time before the usual hour of retiring is sufficient, and the same distinction between place of business and place of residence is important if the notice is sent by mail. Suppose the usual hours of business close at 5 o'clock, then a notice by mail addressed to the place of business would have to be mailed so as normally to reach the party before that hour, whereas if addressed to the home of the indorser the notice would be mailed in time, if by the normal course of post, it would reach the indorser's residence by 6 or 7 o'clock.

294. EFFECT OF SUNDAYS AND HOLIDAYS AND SATURDAYS.—The question may be raised how a holiday or Saturday affects this question. The act provides broadly, in Section 194, that anything that is required to be done on Sunday or a holiday may be done on the next succeeding business day. We suppose, therefore, that the period for giving notice is extended by this provision so far as holidays and Sundays are concerned, but there is no such general provision as to Saturday. There is a provision as to presentment of notes maturing on Saturday, (Section 85), but there is none in regard to notice on Saturday. It would seem, therefore, that the general rule as to notice on any ordinary day would also be applicable to Saturday, except that a notice required to be

mailed so as to arrive, in normal course of mail, during business hours would have to be mailed earlier if it were expected to arrive on Saturday than if expected to arrive on another day.

295. SECTION 104.—[WHERE PARTIES RESIDE IN DIFFERENT PLACES.] Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:—(1) If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter. (2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

296.—ILLUSTRATION OF SECTION 104.—Where the party notifying and the party to be notified reside in different places the notice if sent by mail must be deposited in time to go on the day following the day of dishonor, or if there is no mail at a convenient hour on that day, by the next mail thereafter. If the only mail left a place at 6 A. M. it would be enough to mail a notice in time to go out at 6 A. M. on the next day but one after the day of dishonor. But it has been held in Wisconsin, and we suppose it is clearly right, that where the daily mail left between 9 and 10 o'clock in the morning that was a convenient hour, and the notice must be mailed so as to catch that mail on the

day following the day of dishonor. The notice may be given otherwise than through the postoffice, and then the test is whether it is given within the time that notice would have been received in due course by mail if it had been properly sent.

297. SECTION 105.—[WHEN SENDER DEEMED TO HAVE GIVEN DUE NOTICE.] Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

298. TELEGRAPHIC NOTICE.—The question may be asked about a telegram. In one respect that would be different from the mail. Telegraphic notice would be all right if it were received in time, but if it were not received in time even though reasonably sent, the telegraph company's misconduct, or deficiency would not be at the risk of the party to be notified, but of the party attempting to use that means. It is only the mail which the statute provides way be used at the risk of the party to be notified.

299. SECTION 106.—[DEPOSIT IN POST-OFFICE; WHAT CONSTITUTES.] Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

300. DELIVERY TO A CARRIER.—Under the federal postal regulations it is the duty of a letter carrier not only to deliver letters but to receive

them when tendered. Accordingly it may be supposed that delivery to a letter carrier when he is engaged in the course of his business would be in legal effect a deposit in the postoffice.

301. SECTION 107.—[NOTICE TO SUBSEQUENT PARTY; TIME OF.] Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

302. SUCCESSIVE NOTICES TO SEVERAL PARTIES.—When notice is properly given to one party secondarily liable, he has the same time to give notice to antecedent parties. This raises rather a curious situation sometimes. Suppose the holder gave prompt notice to the last of four or five indorsers, and also gave notice, but not promptly, to the first indorser; the latter notice is ineffective. But suppose notice had been given by the last indorser to the one before, and so in turn each indorser seasonably notifies the preceding one until finally the first indorser is notified by the second; that is a good notice to the first indorser, although it arrives a week or a fortnight later than the other one which was a bad notice; and under Section 93, that second notice would not only inure to the benefit of the indorser who sent it, but it would inure to the benefit of the holder. There is one method of sending notice to earlier indorsers which was upheld in a case decided in Massachusetts fifty

or sixty years ago, but we are not sure whether the method is commonly in use now; that is, by mailing notices to all the indorsers under one cover to the last indorser, leaving him to forward the notices to the earlier indorsers. Of course, if he does so promptly there is no doubt that such notices are timely (Section 107) and inure to the benefit of the holder, but it was further held in this case to be a proper method of notification, charging all the indorsers, even though the last indorser did not forward the notices to the earlier indorsers. It has been held in New York, however, that this is not a sufficient way of giving notice. It cannot be recommended as a safe practice.

303. SECTION 108.—[WHERE NOTICE MUST BE SENT.] Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:— (1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) If he live in one place, and have his place of business in another, notice may be sent to either place; or (3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

304. ADDRESS TO WHICH NOTICE SHOULD BE SENT.—As we have said, it is some-

times a safer thing to mail a notice of dishonor to a party secondarily liable than to attempt to deliver it to him personally. In mailing a notice, however, there is sometimes a difficulty in knowing to what address the notice should be sent. It is not a bad plan to get parties to negotiable instruments, indorsers and drawers, if you are not perfectly sure of their addresses, to write them below their signatures on the paper. If that is done then notices sent to these addresses will always be sufficient. If you have no such guide, then you may properly mail a notice to the postoffice where the party to be notified is accustomed to receive his mail or the postoffice nearest to his residence. This postoffice may be at his place of residence or at his place of business. If his place of residence and place of business are in different places, a notice to either is sufficient. If he is temporarily staying in a place, notice may be sent to that place, and presumably it may also be sent to his regular address, even though he is sojourning somewhere else. And finally, if the notice is actually received in time, it does not make any difference how it was received or how it was sent. A case illustrating the difficulties that may arise and the decision of a court on such a question is this: the notary who was to send the notice inquired of several persons as to the indorser's address. The persons to whom he spoke seemed to know about it. They said they thought that a certain town was the nearest town to the farm where the indorser lived.

The letter containing the notice was sent accordingly to that address but that did not happen to be the town where the indorser received his mail, and the indorser did not receive the notice within a reasonable time. Nevertheless, it was held to be sufficient under the terms of the statute.

305. SECTION 109.—[WAIVER OF NOTICE.] Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

306. NOTICE MAY BE WAIVED.—Notice of dishonor may be waived just as presentment may be waived. It may be waived before the dishonor of the instrument or it may be waived afterwards. In the latter case, it is exceptional that liability should be incurred. The waiver after dishonor is in effect a mere promise to pay in spite of not having received notice; that is, the so-called waiver is really a promise without consideration, but, nevertheless, it is binding.

307. SECTION 110.—[WHO IS AFFECTED BY WAIVER.] Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

308. ILLUSTRATIONS OF WAIVER CASES.—Occasionally where the waiver is written in the instrument itself a question arises as to the number of persons to whom it applies. If a waiver is contained in the body of the instrument presum-

ably it applies to all persons who may become secondarily liable. On the other hand, if it is written above the signature of an indorser, it presumably applies to the single indorser only whose name is written underneath. But one might perfectly well write on the back a waiver which would apply to anybody who might indorse, as, for instance, "All indorsers on this instrument waive notice."

309. SECTION 111.—[WAIVER OF PROTEST.] A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

310. COMMENT ON SECTION 111.—Protest is used with exact propriety only in regard to presentment by a notary and a notice by him embodying a statement of the dishonor of the instrument, but the word is constantly used by bankers and business men as including broadly the necessary formal steps taken by any holder to establish his rights against parties secondarily liable. The statute gives effect to this understanding of business men.

311. SECTION 112.—[WHEN NOTICE IS DISPENSED WITH.] Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

312. COMMENT ON SECTION 112.—Strictly speaking, not presentment or notice but diligence is what the law requires. If, therefore, the holder has

exercised due diligence it makes no difference whether there has in fact been presentment or notice. It must be remembered, however, that the excuses for presentment and for notice are different, and the fact that one is excused does not of itself excuse the other.

313. SECTION 113.—[DELAY IN GIVING NOTICE: HOW EXCUSED.] Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

314. NOTICE EXCUSED SOMETIMES.—Notice of dishonor is sometimes excused, even though there is no waiver by the party interested. It may be excused temporarily or it may be excused permanently. It is excused temporarily by any circumstance beyond the holder's control and not due to his negligence which makes it impossible to give prompt notice. As soon as the cause for the delay ceases to exist notice must then be given. The commonest illustration of this sort of thing is where the holder is unable, after reasonably diligent inquiry, to determine at once the address of the party to be notified. It may take him some time to find an address. If he is reasonably diligent that delay will be excused, but as soon as he can find the address with reasonable diligence, further delay will not be excused.

315. SECTION 114.—[WHEN NOTICE NEED NOT BE GIVEN TO DRAWER.] Notice of dishonor is not required to be given to the drawer in either of the following cases:—(1) Where the drawer and drawee are the same person. (2) When the drawee is a fictitious person or a person not having capacity to contract. (3) When the drawer is the person to whom the instrument is presented for payment. (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument. (5) Where the drawer has countermanded payment.

316. COMMENT ON SECTION 114.—The cases where notice of dishonor is permanently excused may be summed up thus: where the person to be notified had no right to expect that the maker or drawee of the instrument would pay it, he cannot complain if he receives no notice. There are various illustrations of that stated in this section, and subsection 4 would cover any case not specially enumerated in the other subsections. If the drawer and drawee are the same person, obviously the drawer knows when the drawee refuses to pay, therefore the drawer is not entitled to notice. If the drawee is a fictitious person, or one without capacity to contract, the drawer ought to have known that and ought to have expected that the result would be non-payment of the draft, and therefore cannot expect notice. So, also, where the drawer had no right to draw the instrument, as where he had no funds or no arrangement for payment of the draft, or where

he himself had entered into any arrangement with the drawee not to pay the draft, as if he countermanded payment. Similar cases calling for no further comment arise in regard to an indorser, and are covered by the next section. There is also the case of either drawer or indorser being the person who really ought to pay the instrument, the signature of the party primarily liable being merely lent for accommodation. (Sections 114, 115.)

317. SECTION 115.—[WHEN NOTICE NEED NOT BE GIVEN TO INDORSER.] Notice of dishonor is not required to be given to an indorser in either of the following cases:—(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument. (2) Where the indorser is the person to whom the instrument is presented for payment. (3) Where the instrument was made or accepted for his accommodation.

318. SECTION 116.—[NOTICE OF NON-PAYMENT WHERE ACCEPTANCE REFUSED.] Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

319. COMMENT ON SECTION 116.—Where the instrument has once been dishonored by non-acceptance, the parties secondarily liable are charged, if notice is given. If an acceptance is subsequently taken by the holder, the parties secondarily liable are again freed, but will be once again made liable if

the acceptor fails to pay, and notice is properly given of this failure.

320. SECTION 117.—[EFFECT OF OMISION TO GIVE NOTICE OF NON-ACCEPTANCE.] An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

NOTE.—In the Wisconsin Act these words are added “but this shall not be construed to revive any liability discharged by such omission.”

321. KNOWLEDGE OF DISHONOR FOR NON-ACCEPTANCE.—There is one other circumstance besides the fact that paper is overdue which will prevent a purchaser for value without notice from being a holder in due course; that is, knowledge that a bill of exchange has been dishonored by a refusal to accept. On the continent of Europe a bill of exchange is always presented for acceptance as well as for payment by a notary, and if acceptance or payment is refused the notary marks in ink on the face of the bill that circumstance. Accordingly, anybody can tell, on the continent of Europe, from the face of a bill of exchange, whether it has been dishonored before maturity. But in this country and in England the bill may have been dishonored by refusal to accept, and a right of action may have accrued against the drawer, and yet, maturity not having come, a purchaser may have bought the instrument in good faith. Such a purchaser will be a holder in due course, although if he had notice of the dishonor for non-ac-

ceptance, he would not be a holder in due course, even if he bought before maturity of the bill (see further Section 133), and if a holder in due course he can charge the parties to the bill, even though they have been discharged so far as a prior holder was concerned by his failure to give them due notice of the dishonor for non-acceptance.

322. **SECTION 118.**—[WHEN PROTEST NEED NOT BE MADE; WHEN MUST BE MADE.] Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

323. **IMPORTANCE OF PROTEST.**—Protest is the most certain way to prove the facts, showing that secondary parties to a negotiable instrument have been charged; therefore it is frequently desirable even where not legally essential. At common law a protest was required in only one case; that is, on the dishonor of foreign bills. The statute now makes the protest evidence in regard to the dishonor of any negotiable instrument.

Article VIII—Discharge of Negotiable Instruments

324. **SECTION 119.**—[INSTRUMENT; HOW DISCHARGED.] A negotiable instrument is discharged:—(1) By payment in due course by or on behalf of the principal debtor. (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

(3) By the intentional cancellation thereof by the holder. (4) By any other act which will discharge a simple contract for the payment of money. (5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

NOTE.—In the Illinois Act subsection (4) is omitted.

325. DISCHARGE OF INSTRUMENT.—The discharge of an instrument is a kind of absolute defence. An instrument is discharged, first, by payment in due course by the principal debtor. “In due course” means at or after maturity. A payment before maturity does not discharge the instrument. That would not be an absolute defence. One who purchased a note before maturity which had in fact been paid could collect again. Even if the payment is made in due course,—that is, at or after maturity,—it must be made by or on behalf of the principal debtor. A payment by an indorser at or after maturity would not discharge the instrument; the maker, of course, would still be liable on it. But the second paragraph of Section 119 provides that payment in due course by a party accommodated would discharge the instrument; that is, if an instrument were made for the accommodation of an indorser, payment by that indorser would totally discharge the instrument.

326. CANCELLATION.—A third method of discharge, enumerated in Section 119, is by the intentional cancellation of the instrument. That may be regarded as the normal way of discharging a

negotiable instrument. A negotiable instrument is looked on as a formal thing which exists as an obligation normally as long as it exists uncanceled. Destroying the instrument is destroying the obligation, so that either tearing or punching holes in or otherwise cancelling an instrument is the appropriate way of discharging it, and will discharge it even if it is done before maturity. A question has arisen as to the effect of an intended cancellation before maturity, which was not done so effectively as to be ineradicable. There were certain notes of the District of Columbia which were taken up before maturity and stamped as paid with a rubber stamp, but they were not punched or the paper otherwise destroyed or mutilated. Somebody got hold of them, washed off the marks of the rubber stamp and negotiated them again before maturity. The Supreme Court of the United States held that the notes had been effectively cancelled and could not be enforced, even by a holder in due course. The court, we think, regarded the cancellation as on the whole not negligently done. It would seem to us as if a holder in due course ought to be able to collect on such an instrument if the cancellation were really done so carelessly as to invite alteration by rubbing out the marks of cancellation. To be effectual, cancellation must be intentional. Strictly at common law even unintentional cancellation destroyed the obligation, because the obligation was regarded as identical with the instrument and not

able to survive its destruction or mutilation; but courts of equity first compelled the issue of a new instrument when the original was cancelled accidentally, or lost or destroyed accidentally, and now even in a court of common law such an instrument cancelled by mistake or lost or destroyed would still be regarded as imposing an obligation on the parties to it.

327. ACTS WHICH WOULD DISCHARGE A SIMPLE CONTRACT.—The fourth method of discharge enumerated in Section 119 is by any other act which will discharge a simple contract for the payment of money. That is simply a blunder of the statute. Among amendments in the statute which have been proposed is the repeal of this fourth method of discharge. It is a blunder for this reason: in a non-negotiable contract, that is in a simple contract, for the payment of money, any agreement between creditor and debtor for the discharge of the debt, if made for good consideration, will discharge it. Thus, if the creditor agrees to take a horse in payment of a debt of \$100 and the debtor gives the horse, the debt is discharged. But suppose the case of negotiable note for the payment of money and an agreement before maturity by the payee to take a horse in full satisfaction, and that horse given, that would not discharge the note. An indorsee of the note before maturity, who took the instrument in ignorance of the settlement and paid value, would be able to enforce it under the law, as

it was before the Negotiable Instruments Law was enacted, and it is hard to believe that the statute can have intended to change in so essential a matter the law of negotiable paper as to alter that rule.

328. **THE HOLDER AT MATURITY THE PRINCIPAL DEBTOR.**—A final method of discharge is stated in the same section of the Act, that is, when the principal debtor becomes the holder at or after maturity in his own right. You will see the reason for such a rule. If the maker of a note is the owner of it at maturity, then the duty to pay and the duty to receive payment are united in the same person and they cancel each other. But the maker must be the holder at maturity in his own right. That means if he were the holder as executor or as trustee, while his obligation as maker was his individual personal obligation, the instrument would not be discharged.

329. **SECTION 120.**—[WHEN PERSONS SECONDARILY LIABLE ON, DISCHARGED.] A person secondarily liable on the instrument is discharged:—(1) By any act which discharges the instrument. (2) By the intentional cancellation of his signature by the holder. (3) By the discharge of a prior party. (4) By a valid tender of payment made by a prior party. (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved. (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instru-

ment, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

NOTE.—In the Illinois Act subsection (3) reads: “(3) By a valid tender of payment made by a prior party.” To subsection 5 there is added “or unless the principal debtor be an accommodating party.” Subsection (6) is amended to read as follows: “By an agreement in favor of the principal debtor binding upon the holder to extend the time of payment, or to postpone the holder’s right to enforce the instrument, unless made with the assent, prior or subsequent, of the party secondarily liable, or unless the right of recourse against such party is expressly reserved, or unless the principal debtor be an accommodating party.” In the Missouri Act there is added to subsection (3) “except when such discharge is had in bankruptcy proceedings.” In the Wisconsin Act there is inserted a new subsection: (4a) By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder’s hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes.” The words “prior or subsequent” are inserted after “assent” in subsection (6) and the words “or unless he is fully indemnified” are added to the subsection. In the Maryland and New York Acts the words “unless made with the assent of the party secondarily liable, or” in subsection (6) are omitted.

330. DISCHARGE OF SINGLE OBLIGATIONS ON AN INSTRUMENT.—An instrument may be discharged as to one party without being discharged altogether, and Section 49 provides for a case which not infrequently happens in suits or negotiable instruments. When a man sues on a negotiable instrument he must trace his title from the payee, if it is payable to order, until his own title accrues. Now if there are a series of special indorsments, the holder must prove every one of them,—prove that they were made by the person

who purported to make them; but if there is a blank indorsement the holder may fill in his name there, and frequently, where there is a special indorsement subsequent to a blank indorsement, the holder will cross out the special indorsement so as to leave the blank indorsement as the last one; then he can fill in his own name in the blank. But if he does that the indorser whose name is struck out is discharged; it is a cancellation of his obligation. Accordingly, one wants to be sure before striking out an indorsement in this way that the other parties are sufficiently responsible to make the collection of the instrument certain.

331. DISCHARGE OF JOINT DEBTOR OR SURETY.—We now come to a rather troublesome matter of personal defences which must be understood in order to comprehend subsections 5 and 6 of this section. It presents this question. How far does a discharge or dealing with one party to a negotiable instrument affect the holder's rights against other parties to the instrument? And there are two situations where this question becomes especially important: one, where there are joint obligors, either as makers or as indorsers, and second, where there are parties bearing the relation to one another of principal debtor and surety.

332. RELEASE OF ONE JOINT DEBTOR RELEASES ALL.—A joint debtor stands in rather a technical relation to his creditor, and it was a rule of the common law that a release of one joint

debtor released all. As they could no longer, after the release of one, be all bound jointly, and as that was the only relation entered into by them, if one was out all in effect were freed. Similarly a judgment against one joint debtor discharged all. Accord and satisfaction with one discharged all.

333. COVENANTS NOT TO SUE.—A covenant not to sue one, however, did not discharge all. A covenant not to sue any debtor is merely a contract with the covenantee that he shall not be sued. The covenantor, the maker of the obligation, therefore, though he would make himself liable in damages, might break his contract not to sue and nevertheless sue. So the result is if a creditor gives a joint debtor a covenant never to sue him, the creditor may nevertheless sue him together with the other joint debtors (and the creditor would have to sue all of them at once in order to recover), and it would be no defence that he had covenanted not to sue. The suing creditor could say, "Yes, I promised not to sue and I am breaking my promise, but if that results in any damage to you, you can sue me for breaking my covenant." It might cause some damage to the covenantee, but it might not cause any substantial damage. The creditor of joint debtors, though he gets, if he succeeds in his action, a joint judgment against them all, may levy execution on the property of any of the debtors. He does not have to get it equally from all. He can go wholly against one, and the joint debtors will have

to settle up between themselves as to what each ought to pay. Accordingly, if the creditor gets a joint judgment against his joint debtors after he has given one of them a covenant not to sue him, no damage substantially will be caused to that covenant if the creditor levies execution wholly against the other debtor. This, then, is a summary of the situation as to joint debtors. The holder must not release one of them or make accord and satisfaction, but he may, without destroying his right of recovery against the rest, covenant not to sue one. The real effect of that would be better expressed by calling it a covenant not to levy execution on any judgment against the covenantee, for that is in substance what it amounts to.

334. DISCHARGE OF SURETY BY DEALING WITH PRINCIPAL.—Now let us take the more troublesome case of the principal debtor and surety. It is a rule of the law, applicable not simply to negotiable paper, but to contracts generally, that a surety may be discharged by several kinds of dealing with the principal debtor. The surety will be discharged, first, by any release of the principal debtor; second, by any change in the nature of the obligation made by agreement with the principal debtor; and third, by any dealing with the collateral put up by the principal debtor in a way not warranted by the original agreement, (even though the principal debtor after the original agreement may have authorized this dealing with the collateral),

or by the refusal to accept a tender of payment by the principal debtor. The reason why the surety is discharged in all these cases is broadly that he has agreed to go security for an obligation on certain terms, and it is not fair to him to try to hold him as security when the situation has changed. Of course it has changed materially if the principal debtor is released, and the obligation would be thrown wholly on the surety. It is less obvious, perhaps, but still clear, that it is unfair to the surety if any agreement is made with the principal debtor whereby the terms of the obligation are otherwise altered.

335. GIVING TIME TO THE PRINCIPAL.—The commonest kind of alteration of the terms of the obligation of the principal debtor is by what is called giving him time; that is, extending the time of his obligation. Suppose a maker of a note is the principal debtor and an indorser is surety. The note is due on February 1. A contract is made with the maker that he shall have until February 15 to pay that note. That will discharge the indorser. This does not rest on any principle of negotiable paper. It would be the same if instead of a note we had said a bond with a surety, maturing at a certain time, and an agreement was made with the principal debtor to extend the bond for a month. But now in order that this giving of time or any other change in the obligation shall have the effect of which we speak, it is essential that the agreement to

give time or to make any other change shall be binding. It must be a binding contract with the principal debtor. If the holder of the note of which we have spoken should merely say to the maker, "You may have until the 15th of February; until then we shall not press you," that would not discharge the indorser, providing that presentment had been made at maturity and notice given according to the rules of negotiable paper. In the case as we have last put it the creditor has made no binding contract to hold the obligation open until February 15. The creditor has promised to do so, but there has been no consideration for that promise. If, however, the parties made a bargain by which the maker agreed to pay the interest until February 15 in return for promise by the holder not to enforce the note until that date, then you would have a binding contract and the surety would be discharged. It follows, of course, that any covenant not to sue the principal debtor discharges the surety; since a covenant is under seal and binding without consideration.

336. DEALING WITH COLLATERAL.—The third way of discharging a surety that we spoke of, by dealing with collateral, not infrequently arises in dealings with banks. Collateral is put up for an indorsed note, and the maker wants to make a substitution of collateral and is allowed to do so by the bank. Unless there was something in the terms of the original bargain to which the surety was a party

which allowed that substitution of collateral, the bank will lose its right against the indorser if it permits the substitution of collateral without the indorser's assent. You will readily see the reason of this when your attention is called to the fact that the surety—the indorser—is as much interested in the sufficiency of the collateral as the bank is. If the collateral is insufficient the surety will have to answer for the consequences. Accordingly, the surety has a right to be consulted if there is any question of substituting different collateral from that which was originally put up with the note. Even more clearly if the principal debtor tenders payment and the creditor refuses to accept it, he cannot thereafter hold the surety.

337. DIFFERENT WAYS IN WHICH SURETIES ARE LIABLE.—Now sureties may be liable, either jointly with the principal debtor, or jointly and severally, or severally. Moreover, the surety may or may not be evidently such by the terms of the instrument. On a promissory note with indorsements the maker is at least apparently the principal debtor and as to him the indorsers are sureties. Moreover a party may be a principal debtor with reference to one party, and a surety with reference to another. Thus the first indorser is a principal with reference to the second indorser, but a surety with reference to the maker. But where signatures are for accommodation, it may happen that one who seems to be the principal debtor is

really only a surety, or the principal debtor and surety may promise jointly. One of the joint makers of a note may be a surety. If he is, sometimes the note says so; sometimes it does not. If the surety and principal debtor are joint obligors you have to look out both for the difficulties previously referred to as inherent in the situation of joint debtors, and also for the difficulties always inherent in the relation of principal and surety. These two things must be separately looked out for.

338. EXPRESS RESERVATION OF RIGHTS.—There is one qualification, however, in regard to what we have said about the effect of a release, either of a joint debtor or of a surety. It is held that by express reservation of the creditor's right against a surety, or against a joint debtor who is not a surety, the creditor may retain his rights. In effect the instrument though called a release with reservation of rights is treated by the law as though it were merely a covenant not to levy execution on the discharged debtor. Let us see how this works out. If a creditor releases a joint debtor who, we will suppose, is also the principal debtor, with reservation of rights against the surety, the creditor must sue both parties if he wants to collect against anybody, but then he will levy execution against the surety. The surety will then sue the principal debtor for indemnification,—for a principal debtor is always bound to indemnify a surety who has been compelled to pay,—and the principal debtor will

thus eventually have to pay the debt. The principal debtor cannot in turn sue the creditor, because the creditor by reserving rights against the surety had bargained for the right to collect from him even if the consequence of so doing involved loss to the principal debtor. The result is that a release with reservation of rights given to a principal debtor does not do him any ultimate good. It saves him from having his property directly seized by his creditor, but as soon as the surety is forced to pay, that surety will then sue the released principal debtor and collect from him. As a practical matter the moral is: if you are releasing any party to a negotiable instrument, or, indeed, to any contract, always insert a reservation of rights against all other parties if you don't mean to discharge the whole instrument. If one simply follows this rule in every case it will be unnecessary to think out in just what cases the release might be fatal and in what case it might not be. Always add, "Reserving, however, all my rights against other parties to the instrument."

339. **CONCEALED SURETYSHIP RELATION.**—Now as we have said, the suretyship relation may appear on the face of things or it may not. On the face of a note made by A and indorsed by B, A appears to be the party who is the principal debtor and B appears to be the party who is the surety, but that is not necessarily the fact. That note may have been made by A for the accommoda-

tion of B. In that case B is really as between the parties the principal debtor, and A, the maker of the note, is the surety.

340. GIVING TIME TO SURETY WHO DOES NOT APPEAR TO BE SUCH.—Now what is the effect of a contract by a payee, the holder of the note, to give time to A? Giving time to a surety does not discharge a principal debtor, and if A is in fact the surety, B, the principal debtor, cannot complain if time is given to A. But suppose the holder of the instrument, being ignorant that A was an accommodation maker, and therefore was really a surety, gave time or a covenant not to sue to B, the indorser, is A discharged? Can A say to the payee who is holder, "You have given time to B, the indorser, and as he was really the principal debtor, you have changed the form of the obligation; and as I am really a surety, though I seem to be the principal debtor (as I am the maker of the note), I am discharged." Prior to the passage of the Negotiable Instruments Law the answer to that question depended on this: did the payee or holder actually know when he gave time to B, the indorser, that A was really a surety for B and that B was the principal debtor? If at any time before making the contract of indulgence the holder knew that B was really the principal debtor, then an agreement for time made with B would discharge the surety, A, the maker of the note. In other words, the holder had to respect the suretyship relation between the

parties as soon as he had notice of it, even though he did not know of it at the time he became holder but found it out afterwards.

341. EFFECT OF NEGOTIABLE INSTRUMENTS LAW.—Now it has been a disputed question under the Negotiable Instruments Law whether that law has changed this rule, but the view adopted by most States which have had the question before them is that the Negotiable Instruments Law changed the rule of the common law; that the language of Section 120, which is the section involved, is such as to indicate that the Legislature intended the holder should only be bound to consider who was primarily liable on the instrument, and need take no notice of a suretyship relation not apparent on the face of the instrument. It still remains law, as it was before the Negotiable Instruments Law, that to give time to a principal debtor, who is prior on the instrument to the surety, will discharge the surety; but it is probably not true under the Negotiable Instruments Law, that finding out afterwards that the party subsequent on the instrument is really the principal debtor compels the holder to treat him as such. In any State where the matter has not yet been decided, however, the only safe way would be to assume that the rule of the Common Law might still prevail and treat one who was discovered to be a surety in the same way whether or not he appeared by the instrument to be such.

342. SECTION 121.—[RIGHT OF PARTY WHO DISCHARGES INSTRUMENT.] Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:—(1) Where it is payable to the order of a third person, and has been paid by the drawer; and (2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

343. COMMENT ON SECTION 121.—This section only becomes important where the party secondarily liable derives title through the prior parties whom he is endeavoring to hold liable. If, when he is remitted to his original position, he could not hold any prior party liable on the instrument, it is in effect totally discharged.

344. SECTION 122.—[RENUNCIATION BY HOLDER.] The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

345. COMMENT ON SECTION 122.—Renunciation is an exceptional kind of personal defence that is not allowed in contracts generally but only

in regard to negotiable instruments. A holder of a negotiable instrument may by simply writing to the maker that he renounces his rights on the note discharge the maker so far as this holder personally is concerned. The maker will not have an absolute defence against a subsequent holder in due course, but he will have a personal defence against the holder who has thus renounced his rights. This is entirely different from the law governing a simple contract. If a creditor on a simple contract agrees to renounce his rights for any sum less than the face of a liquidated debt, the renunciation or the agreed surrender of the creditor's rights amounts to nothing. The payment of part of the debt is not sufficient consideration for the agreement to surrender the whole debt. Still more plainly is it true that the creditor cannot renounce his claim altogether without getting any payment. There would be no consideration for such an agreement on the part of the creditor. But in the case of a negotiable note we have just that possibility. The holder may, without getting any consideration, renounce his rights against the party who really ought to pay the note, that is, the maker unless he made the note for the accommodation of an indorser. In order to be effective the renunciation must be in writing.

346. SECTION 123.—[CANCELLATION; UNINTENTIONAL; BURDEN OF PROOF.] A cancellation made unintentionally, or under a mistake or without the authority of the holder, is

inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

347. COMMENT ON SECTION 123.—The principle involved in this section is the general one that loss or destruction by accident of a negotiable instrument (or any other paper) is not allowed to destroy the rights of the owner of the document.

348. SECTION 124.—[ALTERATION OF INSTRUMENT; EFFECT OF.] Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

NOTE.—In the Illinois Act the words “fraudulently or” (probably “and” was intended) are inserted before “materially” in line one and the words “by the holder” after “altered” in the same sentence. In the Illinois Act the words “fraudulently or” (probably “and” was intended) are inserted before “materially” in line one and the words “by the holder” after “altered” in the same sentence.

349. GENERAL RULE AS TO ALTERATION.—An absolute defence is created by alteration, with which Sections 124 and 125 of the statute deal. Before the statute was passed there were two important things to consider: first, was an alteration material, and second, was it fraudulently made by

the holder. If an alteration was immaterial it would not have any effect whatever. It therefore became important to decide what was a material alteration. Indeed, it is still, and the statute in Section 125 states some of the principal alterations which are held material. Many of them, you will readily see, must be material, as, for instance, alteration of the amount, the time or place of payment, the parties, or the medium of payment, but the date has also been held material, and it has even been held in England that the number of a note is material, and that a change in that creates a material alteration. Prior to the statute, if an alteration was material the next questions were, was it fraudulent and was it made by the holder? If it was not made by the holder, or if, though made by the holder, he made it believing that he was really making the instrument express the agreement of the parties,—as, for instance, if he added to it “with interest at 5 per cent.,” thinking to himself “that was what we agreed,”—such a change prior to the statute would not destroy the instrument. The alterations themselves if not assented to by the parties to be charged would not bind them. The altered instrument would only be effective as if still in its original form, but it would remain a valid instrument just as if it had remained unaltered. To some extent the Negotiable Instruments Law has changed that and substituted a harsher rule. Section 124 provides that “where a negotiable instrument is materially altered

without the assent of all parties liable thereon it is void, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers." If the section stopped there, any material alteration, however innocent, would make the instrument void, even in the hands of a holder in due course, as would all fraudulent material alterations. Section 124, however, further provides: "but when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce payment thereof according to the original tenor." It may seem that this would avoid all difficulties, but consider this case: a note is made payable to A; he, without fraud and thinking it was what the parties agreed, adds the words "with interest at 5 per cent." He does not negotiate the instrument, but holds it till maturity. It would seem that the instrument is absolutely void. The second sentence does not apply, since the instrument has not been negotiated to a holder in due course, and the first sentence of the section says that the altered instrument shall be void. One may suppose a still harsher case: suppose an instrument is altered by a third person not the holder (that sort of case has not infrequently arisen), and suppose as before that there is no negotiation of the instrument prior to maturity. It seems under the wording of this statute that that instrument also is void. In other words, the holder of an instrument must at his peril keep it free from

material alterations not only by himself but by anybody else, and if it once gets altered the only safe thing to do is to sell it as quickly as he can before maturity to a holder in due course. If he does that the holder in due course will be able to recover on the instrument according to its original tenor, but if the instrument is held until after maturity, then there cannot be a holder in due course, since a purchaser after maturity is not so designated, and the original holder himself cannot recover.

350. **RAISED CHECKS.**—Perhaps the commonest kind of alteration in bank business is a raised check. If a check is raised and paid by a bank, the bank can recover the excess payment over and above the original amount of the check from the person to whom payment was made. The bank will not be able to charge its customer the full amount which it has paid, since the customer never authorized payment of the larger amount; so it is essential for the bank's protection that it should recover from the person to whom it made payment in excess. Sometimes it can get at this person, but, of course, not infrequently the person to whom payment is made is a rascal and makes good his escape, or else is irresponsible when caught; then the bank would like very much to charge up the full payment to its customer, and though it cannot generally do that, there is one case where it has been urged that the bank ought to be able to do it. These are the facts of a leading case in England: a man

was going away from home and he left with his wife a number of signed blank checks. She filled in the amount of one of these very carelessly, so that it was perfectly easy for a fraudulent holder of the check to add other words and figures and so raise the check; and the bank, having paid it, claimed the right to charge up against its customer the full amount of the raised check because his carelessness had made possible the loss. The bank was in that case given the right to do so, and it seems to us that that decision is right. It has, however, been overruled in England and in many States of this country is not law. Apparently, in many, if not most States, if we draw a check for \$5 and write the word "five" clear over at the right-hand side of the line, close up against the word "dollars," and also write the figure "5" out at some distance to the right of the dollar mark, so that it is perfectly easy for any one to write "one hundred" in front of the word "five" and insert two figures before the figure "5," still, our bank would not be able to charge that check as \$105 against us, though it was deceived into paying that amount. We think that is wrong, but, as we say, we understand it to be the law in many States. The reason given in the cases for that rule is that one is not bound to anticipate crime. With all respect to the law, it seems that is a silly thing to say. A person who draws a check in the way which we have suggested ought to anticipate crime. Why is it that banks and other persons who

draw large checks commonly adopt stamping devices of one sort or another to fix the amount? It is just because they anticipate the possibility of crime. It seems to us it may be as negligent not to anticipate crime if the door is left wide open for it as not to anticipate any other sort of happening which is likely to follow from careless conduct. But we rather wonder, in view of the law, in such States, that drawers of checks are as careful as they are, for apparently the burden is thrown wholly on the bank, and the drawer is allowed to be careless. Whether there is not some limit to the degree of carelessness which a drawer may exercise we should be interested to have decided. We should like a case to come up where the drawer had been guilty of the most extreme carelessness. We should be interested in seeing whether any court would follow out in such an extreme case the principles that have here been criticised.

351. SECTION 125.—[WHAT CONSTITUTES A MATERIAL ALTERATION.] Any alteration which changes,—(1) The date; (2) The sum payable, either for principal or interest; (3) The time or place of payment; (4) The number or the relations of the parties; (5) The medium or currency in which payment is to be made; Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

352. COMMENT ON SECTION 125.—The

cases stated in the sub-sections of this section are necessarily illustrative. The general principle is stated in the last line and a half of the section. Other illustrations of material alteration are the erasure of the name of an obligor, the insertion of a waiver of demand and notice, the addition or erasure of a seal in a jurisdiction where seals alter the legal effect of an instrument as by allowing a longer statute of limitation. An alteration is none the less material because the change is advantageous to the obligor. To insert a later day of payment, a lower rate of interest, a smaller amount is material. The addition of a collateral guaranty is not material for it does not affect the liability of the principal debtor. The addition, however, of another name as a joint obligor to that of a maker or indorser is material since it purports to make the liability joint instead of several. Correcting a mistake in spelling or in the initials of a name, or inserting a description of security given for the note, is not material.

CHAPTER III

Title II of the Negotiable Instruments Law

BILLS OF EXCHANGE

Article I.—Form and Interpretation

353. SECTION 126.—[BILL OF EXCHANGE DEFINED.] A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

354. COMMENT ON SECTION 126.—The formal requirements of negotiable paper applicable to bills of exchange have been considered in detail in connection with earlier sections of the Act.

355. SECTION 127.—[BILL NOT AN ASSIGNMENT OF FUNDS IN HANDS OF DRAWEE.] A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

356. COMMENT ON SECTION 127.—The fact that a bill must order the drawee to pay unconditionally, of itself indicates that it is not an assignment of a particular fund; if it were it would violate a fundamental principle of the law of negotiable

paper requiring an unconditional order, for that means an order to pay irrespective of the existence of any fund.

357. **SECTION 128.—[BILL ADDRESSED TO MORE THAN ONE DRAWEE.]** A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

358. **REASON FOR LIMITING THE NUMBER OF DRAWEES.**—The reason for not allowing several persons to be drawees in the alternative or in succession is because the multiplication of presentments necessary in order to charge the parties secondarily liable would work practical inconvenience. It is true that somewhat similar inconvenience may be caused by drawing on a number of persons jointly, especially if they are not partners, since in that case presentment must be made to each of them, but the allowance of such a bill seems unavoidable.

359. **SECTION 129.—[INLAND AND FOREIGN BILLS OF EXCHANGE.]** An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

360. **IMPORTANCE OF DISTINCTION BETWEEN INLAND AND FOREIGN BILLS.**—There are two reasons for distinguishing between inland and foreign bills; the most important reason

is that foreign bills must be protested by a notary, whereas no formal protest is necessary in regard to inland bills; the other reason relates to a subject called the conflict of laws. If the law of the jurisdiction where a bill is drawn differs from the law of the jurisdiction where it is payable, it is necessary to decide which law governs the case. In general the law of the place where the bill is drawn governs the nature and character of the obligations assumed by the parties; but the law of the place where it is payable governs the formalities of presentment, protest, and the necessary diligence to charge persons secondarily liable.

361. SECTION 130.—[WHEN BILL MAY BE TREATED AS PROMISSORY NOTE.] Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

362. COMMENT ON SECTION 130.—The reason for the rule stated in this section is that in the cases supposed, the drawer in legal effect is absolutely bound to pay, whereas the drawer of an ordinary bill of exchange is only bound to pay on condition that some one else fails to pay on presentment at maturity.

363. SECTION 131.—[REFEREE IN CASE OF NEED.] The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say

in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

364. **COMMENT ON SECTION 131.**—The practice alluded to in this section is probably not common.

Article II.—Acceptance

365. **SECTION 132.**—[ACCEPTANCE; HOW MADE, ET CETERA.] The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

366. **SECTION 133.**—[HOLDER ENTITLED TO ACCEPTANCE ON FACE OF BILL.] The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

367. **RIGHTS OF HOLDER IN ACCEPTANCE.**—Though (as indicated by the two following sections) an acceptance may be valid though not written on the face of the bill, the holder of the instrument may require that it shall be so written, and, if this request is refused, may treat the bill as dishonored. It is important for a holder to exercise this right and not to rest satisfied with an acceptance which is not written on the bill.

368. SECTION 134.—[ACCEPTANCE BY SEPARATE INSTRUMENT.] Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

369. WHAT IS AN ACCEPTANCE IN WRITING?—It is to be observed that though an acceptance not written on the bill is in some cases a valid acceptance, it must be in writing. What is such a promise in writing as to amount to an acceptance may give rise to question; especially whether a telegraphic promise is an acceptance in writing. The promisor ordinarily writes the message but delivers this writing to the telegraph company, which gives another writing to the promisee. It is probable that this is sufficient to satisfy the statute; but a promise over the telephone is insufficient; the common practice of inquiring over the telephone whether a draft or check will be paid is frequently convenient, but it must be remembered that the practice is not protected by the Negotiable Instrument Law, and a promise so made is not an acceptance within the meaning of the Statute, though under some circumstances it may amount to a simple contract.

370. SECTION 135.—[PROMISE TO ACCEPT; WHEN EQUIVALENT TO ACCEPTANCE.] An unconditional promise in writing to accept a bill before it is drawn is deemed an actual

acceptance in favor of every person who upon the faith thereof, receives the bill for value.

371. COMMENT ON SECTION 135.—The rule stated in this section was established in the United States as matter of common law prior to the passage of the Negotiable Instruments Law. It is nevertheless contrary to the custom of merchants which requires the obligations of negotiable paper to be written on the paper itself, and is opposed to the English law. Such a right as is here alluded to would seem on principle to constitute at most a simple contract. The law, however, is settled in the United States by the statute that such a promise becomes negotiable when the bill is drawn and is treated as if it were part of the bill.

372. SECTION 136.—[TIME ALLOWED TO DRAWEE TO ACCEPT.] The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

373. COMMENT ON SECTION 136.—The time thus allowed the drawee is presumably a privilege allowed him which he need not necessarily take; that is, if he should refuse to accept at the beginning of the twenty-four hours, the instrument is immediately dishonored; the holder need not wait the remainder of the period to see if the drawee will change his mind.

374. SECTION 137.—[LIABILITY OF DRAWEE RETAINING OR DESTROYING

BILL.] Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

NOTE.—This section is omitted in Illinois and South Dakota.

375. **ACCEPTANCE BY RETAINING THE BILL.**—The case referred to in this section might be properly treated as a case of dishonor for non-acceptance, rather than as a case of acceptance. Suppose the acceptor takes twenty-four hours, or takes the matter under consideration, as the preceding section permits, it is provided that his failure to return the instrument, either with or without his acceptance, at the expiration of the twenty-four hours amounts to an acceptance. It would seem that it rather amounts to a wrongful confiscation of another person's property, but the statute says that it is an acceptance. That means that there must be a demand at maturity for payment of the instrument, in order to charge the drawer or indorsers. This is a section of the statute to which an amendment has been proposed. It would seem reasonable that when a drawee thus retains a bill of exchange and refuses to give it back, to treat the bill as dishonored rather than accepted, for the drawer ought to be notified of the situation. Of course, the case is one that does not very often occur.

376. SECTION 138.—[ACCEPTANCE OF INCOMPLETE BILL.] A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

377. COMMENT ON SECTION 138.—In connection with this section must be borne in mind the rules previously considered in regard to filling blanks in an incomplete instrument. The second sentence in Section 138 expresses an obvious truth. An immediate right of action arises on the original dishonor by non-acceptance; and thereafter the drawee has no right to accept at all unless the holder allows him to. Accordingly the holder may insist on any terms he sees fit as a condition of permitting the drawee to accept subsequently. In connection with this point Section 150 must be borne in mind also. The drawer and any indorsers will be discharged unless the holder treats the instrument as dishonored by the original non-acceptance.

378. SECTION 139.—[KINDS OF ACCEPTANCES.] An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

379. COMMENT ON SECTION 139.—Strictly speaking a qualified acceptance is no acceptance at all. It is a refusal to accept though unaccompanied by a promise to do something different from that which the drawer ordered.

380. SECTION 140.—[WHAT CONSTITUTES A GENERAL ACCEPTANCE.] An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

381. COMMENT ON SECTION 140.—Suppose such an acceptance as is referred to in this section, must the holder present the instrument at the place named in the acceptance, or at the place where the instrument is due according to the tenor of the face of the instrument. Unless the acceptance expressly states that the bill is to be paid only in the place named in the acceptance, presentment must be in the place indicated by the drawing. The acceptor himself could not object to presentment at the place named by him, but parties secondarily liable could assert that the bill was not dishonored unless presented at the place where the drawer ordered payment to be made. The effect of the section is that a place inserted in the acceptance is regarded as merely permissive so far as the acceptor is concerned. If the words were construed as meaning more than this, the acceptance would be a qualified one and therefore a dishonor of the instrument.

382. SECTION 141.—[QUALIFIED ACCEPTANCE.] An acceptance is qualified, which is:—(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated. (2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn. (3) Local, that is to say, an acceptance to pay only at a particular place. (4) Qualified as to time. (5) The acceptance of some one or more of the drawees, but not of all.

383. SECTION 142.—[RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCE.] A qualified acceptance since it involves a refusal to honor the bill according to its tenor is a dishonor of the bill. Therefore, the holder may refuse to take such an acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonored by non-acceptance, with the ordinary consequences. Therefore, also, where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. But when the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

Article III.—Presentment for Acceptance

384. SECTION 143.—[WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.] Presentment for acceptance must be made:—(1) Where the bill is payable after sight, or in any other

case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or (2) Where the bill expressly stipulates that it shall be presented for acceptance; or (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

385. NECESSITY OF PRESENTMENT FOR ACCEPTANCE.—Presentment is of two sorts: presentment for acceptance and presentment for payment. Presentment for acceptance is only appropriate for bills of exchange and is not generally necessary, though the holder of a time bill is entitled to demand that acceptance be made in writing on the bill and signed. In some specific cases provided for in this section, presentment for acceptance must be made. The only one of these cases where you might not know without being told that the rule was so is the last named, requiring that where the bill is payable elsewhere than at the residence or place of business of the drawee. If a bill does not require presentment for acceptance the holder may do just as he chooses about it. If he does present the bill for acceptance and it is dishonored, he must give notice of dishonor in the same way as if it had been presented for payment and dishonored, in order to hold the indorsers. He cannot charge the indorsers, if he has so presented it for acceptance and it has been dishonored, by holding it until maturity

and presenting it again, and on refusal by the payee giving prompt notice to the drawer and indorsers. (Section 150.) Nevertheless, a holder in due course of such an instrument can charge the drawer and indorsers, although the instrument had been dishonored for non-acceptance before this holder took the instrument, and though the drawer and indorsers had no notice of the dishonor.

386. **SECTION 144.**—[WHEN FAILURE TO PRESENT RELEASES DRAWER AND INDORSER.] Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

387. **TIME OF PRESENTMENT FOR ACCEPTANCE.**—If the bill is of a sort which requires presentment for acceptance, the holder must either negotiate it within a reasonable time or he must present it for acceptance within a reasonable time. Suppose the case of a bill payable somewhere else than at the residence or place of business of the drawee and payable in three months. The holder must promptly present it for acceptance or negotiate it. Suppose that he does present it within a reasonable time and acceptance is refused. Thereafter, having waited more than a reasonable time, suppose that he negotiates it for value to a purchaser who knows nothing of the prior presentment. Probably that purchaser would not be protected,

and could not sue the drawer and indorsers because he would have notice from the form of the instrument that there must either have been presentment and dishonor or that the holder has carelessly failed to make presentment within the proper time for acceptance. If presentment for acceptance is made of bills as to which it is not required by the statute, it may be made at any time the holder likes before maturity.

388. SECTION 145.[PRESENTMENT; HOW MADE.] Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and: (1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only. (2) Where the drawee is dead, presentment may be made to his personal representative. (3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

389. WHEN PRESENTMENT MUST BE MADE.—It must be made at a reasonable time of any business day, but one may hold a bill thinking he will not present it for acceptance, and finally change his mind and present it for acceptance shortly before maturity. It may be presented on Saturday prior to 12 o'clock.

390. TO WHOM PRESENTMENT FOR ACCEPTANCE MUST BE MADE.—If the instrument is addressed to more than one drawee it must be presented to all of them unless they are partners. If the drawee of a bill is dead, presentment must be made to his personal representatives. If he has been adjudicated a bankrupt it must be presented either to him or to his trustees in bankruptcy.

391. SECTION 146.—[ON WHAT DAYS PRESENTMENT MAY BE MADE.] A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

NOTE.—The last sentence is omitted in Kentucky and Wisconsin.

392. SECTION 147.—[PRESENTMENT WHERE TIME IS INSUFFICIENT.] Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

393. COMMENT ON SECTION 147.—Here again we see that what the law requires is reasonable diligence, not any particular result, in order to charge parties secondarily liable.

394. SECTION 148.—[WHERE PRESENTMENT IS EXCUSED.] Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:—(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill. (2) Where, after the exercise of reasonable diligence, presentment cannot be made. (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

395. COMMENT ON SECTION 148.—Subsection 2 in this section covers all cases except that in subsection 3. The principle expressed in the latter subsection is of general application in the law of contracts. Where a party to a contract repudiates his obligation, it is unnecessary to comply with the conditions which qualify his obligation. The law does not compel a man to do useless things, and if a party to a negotiable instrument or to any contract announces that he is not going to perform his duty, the required performance from the other side is excused.

396. SECTION 149.—[WHEN DISHONORED BY NON-ACCEPTANCE.] A bill is dishonored by non-acceptance:—(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or (2) When presentment for acceptance is excused and the bill is not accepted.

397. SECTION 150.—[DUTY OF HOLDER WHERE BILL NOT ACCEPTED.] Where a bill

is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

398. **COMMENT ON SECTION 150.**—Though a holder, as provided in this section, must give prompt notice of dishonor by non-acceptance, or he will discharge the drawer and indorser, a holder in due course may (being ignorant of the non-acceptance and taking before maturity) present the bill for payment, and on dishonor for nonpayment charge the drawer and indorsers. This is impossible if any notation on the bill itself indicates its dishonor for non-acceptance, since any one who took such an instrument would be chargeable with notice of what appeared on its face.

399. **SECTION 151.**—[RIGHTS OF HOLDER WHERE BILL NOT ACCEPTED.] When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

400. **DAMAGES ON DISHONOR FOR NON-ACCEPTANCE.**—When there is dishonor for non-acceptance and notice thereof is duly given to the drawer and indorsers, there is an immediate right against them to recover the full amount of the bill. In the case of a non-interest bearing bill it is a clear profit to the holder to have the bill dishonored for non-acceptance rather than for non-pay-

ment. There is no discount of interest for the period between the day of maturity and the day when presentment for acceptance was made.

Article IV—Protest

401. SECTION 152.—[In WHAT CASES PROTEST NECESSARY.] Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

402. PURPOSE OF PROTEST.—Protest is of very old origin, and the essential purpose of it is to furnish the evidence of a disinterested person that a negotiable instrument has been properly presented and dishonored.

403. MEANING OF PROTEST.—Protest is often used broadly to signify any dishonor of a negotiable instrument, but, of course, properly it means presentment by a notary, and his certification that an instrument has been presented for payment and dishonored. Protest is only necessary in regard to foreign bills. (Section 118.) A foreign bill is one which is drawn in one jurisdiction and payable in another. For this purpose the different States of the Union are foreign to each other. (Sec-

tion 129.) A bill drawn in New York payable in Boston is as much a foreign bill for this purpose as one drawn in England payable here.

WHAT MAY BE PROTESTED.—Though protest is not necessary for any other negotiable instrument, except foreign bills of exchange, including foreign checks, it is convenient frequently to protest other negotiable instruments. The law provides that protest may be made of other negotiable instruments (Section 118), and the certificate of protest is evidence in such cases, as well as in the case of foreign bills of exchange, of the facts which it states, namely, that the instrument has been duly presented and notice given. Statements in a certificate of protest, however, whether of foreign bills or of other instruments, are not conclusive evidence of the facts which they state. They are some evidence, but it may be shown by other evidence that the instrument was not presented, or was not presented at the time the certificate asserts, or that the notice was not given as therein asserted.

404. **SECTION 153.**—[**PROTEST; HOW MADE.**] The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:—(1) The time and place of presentment; (2) The fact that presentment was made and the manner thereof; (3) The cause or reason for protesting the bill; (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

405. **ESSENTIAL FACTS MUST BE PUT IN THE PROTEST.**—As the purpose of protest is to furnish evidence of the necessary presentment, all facts which are necessary or useful for making out a case against parties secondarily liable, must be put in the protest.

406. **SECTION 154.**—[PROTEST; BY WHOM MADE.] Protest may be made by—(1) A notary public; or (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

407. **WHO MAY PROTEST PAPER.**—A notary is of course the ordinary person to make a protest, although it is provided that protest may also be made by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. That would perhaps lead to inquiry as to what residents were respectable and what witnesses were credible, and it would be very foolish to take advantage of subsection 2 except in case of absolute necessity. Moreover as the preceding section requires, as the common law required, a seal to be attached to the protest, of which courts, even of another State, would take notice as proving that the paper was what it purported to be, it may be questioned whether the permission given in subsection 2 would be effective in case of a foreign (that is interstate) bill.

408. **SECTION 155.**—[PROTEST; WHEN TO BE MADE.] When a bill is protested, such

protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

409. **TIME OF PROTEST.**—The time of protest is the day of dishonor, unless delay in presentment is excused for reasons which we have previously spoken of. If a bill has been noted for protest, the protest may be subsequently written out as of the day protest was noted, but this must be done exactly. In one case a bill was noted for protest on the 24th of September. The extended protest was dated the 25th of September and contained a statement of the 25th of September as the day of noting. That protest was held invalid.

410. **SECTION 156.**—[**PROTEST; WHERE MADE.**] A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

411. **PLACE OF PROTEST.**—The place of protest is the place where the instrument is dishonored, and that, of course, is normally the place of payment. There is an exception to the rule that a bill must be protested in the place where it is dishonored, namely, when it is drawn payable at the place of business or residence of somebody other

than the drawee, and has been dishonored for non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable.

412. SECTION 157.—[PROTEST BOTH FOR NON-ACCEPTANCE AND NON-PAYMENT.] A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

413. COMMENT ON SECTION 157.—The statute also provides, in Section 150, that where a bill is dishonored for non-acceptance, the bill must be treated as dishonored or the holder will lose the right of recourse against the drawer and indorsers. That seems to mean that if a protest for non-acceptance is duly made, the indorsers and drawer are charged once for all. There is no occasion then for presentment for non-payment. Section 150 also seems to mean that if the instrument is dishonored for non-acceptance, and the holder fails to notify the parties secondarily liable, they are discharged, and in that case, also, there is no use to present for payment afterwards. The only cases, then, that we can think of in view of Section 150, where there could be any possible use in a second presentment, is (1) where the presentment for acceptance for some reason or other was not a proper presentment, and (2) where the place of payment is somewhere other than the residence or place of business of the drawee. Of course it may be desirable as a matter of business to make a second presentment to see if the drawee will not change his mind.

414. SECTION 158.—[PROTEST BEFORE MATURITY WHERE ACCEPTOR INSOLVENT.] Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

415. COMMENT ON SECTION 158.—This follows the practice on the continent of Europe. I do not suppose it is very common in this country.

416. SECTION 159.—[WHEN PROTEST DISPENSED WITH.] Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

417. COMMENT ON SECTION 159.—Again we see that the test of the holder's duty in order to charge indorsers or drawers is diligence.

418. SECTION 160.—[PROTEST WHERE BILL IS LOST, ET CETERA.] When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

419. COMMENT ON SECTION 160.—The law does not permit the rights of a holder of negotiable paper to be impaired by accidental loss or destruction even though the holder was guilty of

negligence. Therefore to protect the owner of such a bill in his rights against parties secondarily liable, he is allowed to make presentment personally, or (if strict protest by notary is necessary) by means of a copy or merely by a statement of the essential particulars of the instrument.

Article V—Acceptance for Honor

420. SECTION 161.—[WHEN BILL MAY BE ACCEPTED FOR HONOR.] Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

421. ACCEPTANCE AND PAYMENT FOR HONOR.—The statute contains rather elaborate provisions in regard to acceptance for honor and payment for honor of a bill of exchange. We suppose that is not of very common occurrence. The purpose of it is this: if we make ourselves liable for another person's debt, or if we pay another person's debt, it is not generally true that we have a right of recourse against him. We have no business to pay

another person's debts unless we want to free him from liability. But in the case of a bill of exchange which is dishonored, that is not true. An outsider may accept or pay for the honor of any party, generally the drawee, rendering himself liable, or making actual payment and still have recourse against the drawer. In order to get this recourse against the drawer it is necessary that the bill shall be presented to the drawee for payment and protested, so that the person who accepts or pays for honor has the certificate of the notary to show that he acted only after the drawee of the bill had refused to honor it. The statute is sufficiently self-explanatory of the general subject in Sections 161-177.

422. SECTION 162.—[ACCEPTANCE FOR HONOR; HOW MADE.] An acceptance for honor *supra* protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

423. SECTION 163.—[WHEN DEEMED TO BE AN ACCEPTANCE FOR HONOR OF THE DRAWER.] Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

424. SECTION 164.—[LIABILITY OF THE ACCEPTOR FOR HONOR.] The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

425. SECTION 165.—[AGREEMENT OF ACCEPTOR FOR HONOR.] The acceptor for

honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

426. SECTION 166.—[MATURITY OF BILL PAYABLE AFTER SIGHT; ACCEPTED FOR HONOR.] Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

427. SECTION 167.—[PROTEST OF BILL ACCEPTED FOR HONOR, ET CETERA.] Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

428. SECTION 168.—[PRESENTMENT FOR PAYMENT TO ACCEPTOR FOR HONOR; HOW MADE.] Presentment for payment to the acceptor for honor must be made as follows:— (1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity. (2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

429. SECTION 169.—[WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.] The provisions of section eighty-one apply where

there is delay in making presentment to the acceptor for honor or referee in case of need.

430. **SECTION 170.—[DISHONOR OF BILL BY ACCEPTOR FOR HONOR.]** When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

Article VI—Payment for Honor

431. **SECTION 171.—[WHO MAY MAKE PAYMENT FOR HONOR.]** Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

432. **SECTION 172.—[PAYMENT FOR HONOR; HOW MADE.]** The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

433. **SECTION 173.—[DECLARATION BEFORE PAYMENT FOR HONOR.]** The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

434. **SECTION 174.—[PREFERENCE OF PARTIES OFFERING TO PAY FOR HONOR.]** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

435. **SECTION 175.—[EFFECT ON SUBSE-**

QUENT PARTIES WHERE BILL IS PAID FOR HONOR.] Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

436. SECTION 176.—[WHERE HOLDER REFUSES TO RECEIVE PAYMENT SUPRA PROTEST.] Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

437. SECTION 177.—[RIGHTS OF PAYER FOR HONOR.] The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Article VII—Bills in a Set

438. SECTION 178.—[BILLS IN SETS CONSTITUTE ONE BILL.] Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

439. BILLS IN A SET.—Another rather exceptional sort of case relates to bills in a set, and this is provided for in Sections 178 to 183. We call the case exceptional, but, of course, it is common enough in foreign exchange. The reason is not apparent why the practice still persists of drawing

such bills in a set, each part of which is an original. We do not know why one original and copies would not serve every useful purpose; but however this may be, it is common to draw foreign bills in a set, and each part is as much an original as the others. | Whichever one is indorsed first gives to the indorser a perfect title to the whole. If the holder of a bill in three parts should indorse the three parts, the first part to A, then the second to B, and then the third to C, A becomes the owner of the whole bill; he can demand the other parts from B and C. It would not matter if the first indorsed part were numbered the third in the set; A would still be the first man to get an indorsement, and he therefore would become owner of the whole set. In spite of the fact that A is the owner of the whole, if B or C should present his part to the drawee, and the drawee in good faith accepted or paid the part first presented to him, the payment would be a discharge of the bill; but we suppose A, who was the first indorsee, would have a right against the later indorsees B or C, who got payment from the drawee. A could say to B or C: "That money which you got really belongs to me, for I was the owner of the bill." Of course, if the holder should do as we have suggested—indorse for value the three parts to different persons—he is committing a fraud. He is liable on his indorsement on every part to whomsoever may have paid value for that part. The ac-

ceptance may be written on any part, but it must be written on only one part. If it is written on more, the acceptor would be liable to a holder of each part on which he had written an acceptance. That is a very sensible provision, and yet we can see no more reason for requiring that acceptance be written on one part only than for requiring that the drawer's name be on one part only. Of course, that is merely saying again, the practice of drawing bills in sets is unfortunate. The acceptor cannot properly make payment on any part except the one on which his acceptance is written; that is, he must get that part surrendered to him or he will not be discharged.

440. SECTION 179.—[RIGHTS OF HOLDERS WHERE DIFFERENT PARTS ARE NEGOTIATED.] Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

441. SECTION 180.—[LIABILITY OF HOLDER WHO INDORSES TWO OR MORE PARTS OF A SET TO DIFFERENT PERSONS.] Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

442. SECTION 181.—[ACCEPTANCE OF BILLS DRAWN IN SETS.] The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

443. SECTION 182.—[PAYMENT BY ACCEPTOR OF BILLS DRAWN IN SETS.] When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

444. SECTION 183.—[EFFECT OF DISCHARGING ONE OF A SET.] Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

CHAPTER IV

Title III of the Negotiable Instruments Law

PROMISSORY NOTES AND CHECKS

Article I

445. SECTION 184.—[PROMISSORY NOTE DEFINED.] A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

446. COMMENT ON SECTION 184.—The requirements of this section have been considered in detail at the beginning of the Act.

447. SECTION 185.—[CHECK DEFINED.] A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

448. LIABILITY OF DRAWER OF A CHECK.—As a check is payable on demand it does not contemplate acceptance, though certification of the check corresponds to acceptance and imposes the liability of an acceptor on the certifying bank. There are three differences of special importance

between the obligation of the drawer of a check and the obligation of the drawer of any other kind of demand bill. In the first place, giving a check is a representation by the drawer that he has funds. If we draw a bill of exchange, which is not a check, on some one and give it to a person who pays value for it, we are not guilty of false representations merely because we have no right to draw on the drawee and he refuses to pay the draft and is under no duty to pay it. We are liable for breach of promise on our signature as drawer, that is all; but one who draws a check and passes it represents that he has funds in the bank and accordingly he is guilty of fraud and misrepresentation, and is not simply breaking a promise if the check is not paid for lack of funds. The other two differences are considered under Sections 186 and 188.

449. SECTION 186.—[WITHIN WHAT TIME A CHECK MUST BE PRESENTED.] A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

NOTE.—In the Illinois and South Dakota Acts there is inserted after the word “issue” “and notice of dishonor given to the drawer as provided for in the case of bills of exchange.”

450. INSUFFICIENT DILIGENCE DOES NOT ALWAYS DISCHARGE THE DRAWER OF A CHECK.—The second difference between checks and ordinary bills of exchange relates to the

effect of using insufficient diligence to charge the drawer. In order to charge the drawer of a bill the instrument must be presented at maturity if it is a demand bill; and on being so presented notice must be given promptly to the drawer if the instrument is dishonored. If such presentment is not made or such notice is not given the drawer of a bill is absolutely discharged. But Section 186 provides that a check must be presented for payment within a reasonable time after its issue (that is, like any bill) or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. Those last words lay down an entirely different rule from that applicable in case of a bill of exchange which is not a check. The drawer of such a bill of exchange would be absolutely discharged. The drawer of a check is not discharged except to the extent of the loss caused by the delay, and usually, unless the drawee bank fails, there will be no loss caused by the delay. This section of the Negotiable Instruments Law says nothing about what would be the effect of a failure to give prompt notice to the drawer in case a check was dishonored. As the statute does say (Section 185) that the rule as to checks is the same as the rule governing bills of exchange in all matters not specifically stated, the effect of the statute seems to be that though delay in presenting a check discharges the drawer only to the extent he was injured, delay in notifying the

drawer of the dishonor of the check absolutely discharges him, just as it does the drawer of an ordinary bill of exchange. Probably this is a blunder in the Negotiable Instruments Law. The law before the statute was that delay in giving notice of dishonor was no more serious than delay in making presentment in the case of checks.

451. SECTION 187.—[CERTIFICATION OF CHECK; EFFECT OF.] Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

452. COMMENT ON SECTION 187.—This section must be taken subject to the qualification in the following section.

453. SECTION 188.—[EFFECT WHERE THE HOLDER OF CHECK PROCURES IT TO BE CERTIFIED.] Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

454. EFFECT OF CERTIFICATION OF A CHECK ON THE DRAWER'S LIABILITY.—The third difference between the drawer of a check and the drawer of an ordinary bill of exchange is stated in this section. Certification of a check corresponds in the main to an acceptance of the bill, as has been said, but if the acceptor of an ordinary bill fails to pay at maturity, the holder can notify the drawer and charge him. In the case of certification of a check, however, a distinction is taken. If the certification is obtained by the drawer of the check

before delivery to the payee, the situation is just the same as in the case of an accepted bill of exchange. The holder, if he does not get his money from the certifying bank, can sue the drawer of the check; but if the holder of a check himself gets it certified he thereby discharges the drawer. The reason for the distinction is this: a check is an instrument payable on demand, and the normal thing for the holder of a check to do is to get his money. If he goes to a bank and asks for a certification he is not doing the normal thing, and it would not be fair to allow him to extend the liability of the drawer by keeping the check outstanding when he might have got his money instead of the certification when he presented the check. With the exception of those three differences the liability of the drawer of a check is the same as that of a drawer of a bill.

455. SECTION 189.—[WHEN CHECK OPERATES AS AN ASSIGNMENT.] A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

456. A CHECK IS NOT AN ASSIGNMENT OF PART OF THE ACCOUNT ON WHICH IT IS DRAWN.—Before the enactment of the Negotiable Instruments Law, there was, in a number though not in most of the States, another important difference between a check and other bills of exchange. It was the law of this minority of the

States that a check made the payee or holder the assignee of a sufficient portion of the drawer's account to pay the check, though an ordinary bill of exchange did not have this effect. Under this rule the bank on being notified of the check was liable directly to the holder to pay it, if the drawer's account was sufficient to meet it. The holder of the check as soon as he acquired it was regarded as becoming owner of so much of the drawer's account as equalled the face of the check. This rule does not exist now in any State which has adopted the Negotiable Instruments Law, for by Section 189 of that statute, it is provided that a check does not operate as an assignment; and the statute also in Section 127 enacts the rule prevailing generally at Common Law that a bill of exchange too does not operate as an assignment.

457. **A CHECK IS NOT AN ASSIGNMENT EVEN WHEN CERTIFIED.**—The last clause of this section is somewhat misleading since it implies that after acceptance or certification, the check does operate as an assignment. The words of the section itself are not perfectly clear. They may mean only that the bank is not liable unless and until it accepts and certifies, which is certainly true, but they may imply also that a check operates as an assignment when the bank certifies. If the comma after the word holder were omitted, the former meaning would clearly be the right one; but in view of the heading of the section

it is probable that the latter meaning was intended. Nevertheless, the holder of a certified check is not an assignee. He has a direct right against the bank. If he were merely an assignee his claim would be subject to any defence which was good against the drawer.

CHAPTER V

Title IV of the Negotiable Instruments Law

GENERAL PROVISIONS

Article I

458. SECTION 190.—[SHORT TITLE.] This act may be cited as the Uniform Negotiable Instruments Act.

459. SECTION 191.—[DEFINITIONS AND MEANING OF TERMS.] In this act, unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument,

complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

460. SECTION 192.—[PERSON PRIMARILY LIABLE ON INSTRUMENT.] The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

461. SECTION 193.—[REASONABLE TIME, WHAT CONSTITUTES.] In determining what is a “reasonable time” or an “unreasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

462. SECTION 194.—[TIME, HOW COMPUTED; WHEN LAST DAY FALLS ON HOLIDAY.] Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

463. SECTION 195.—[APPLICATION OF ACT.] The provisions of this act do not apply to negotiable instruments made and delivered prior to the [taking effect] hereof.

464. SECTION 196.—[CASES NOT PROVIDED FOR IN ACT.] In any case not provided

for in this act the rules of [law and equity including] the law merchant shall govern.

465. SECTION 197.—[REPEALS.] All acts and parts of acts inconsistent with this act are hereby repealed.

466. SECTION 198.—[TIME WHEN ACT TAKES EFFECT.] This [act] shall take effect on

CHAPTER VI

Supplementary Topics

467. **STATUTE OF LIMITATIONS.**—The statute of limitations is always an important matter in regard to negotiable instruments and all forms of contracts. The common statute of limitations governing simple contracts is six years from the time when performance is first due. In some States it has been shortened to five or even three, but six is the most common period. A sealed contract, the evidences of indebtedness of a bank, or a judgment in many States, continues in force for twenty years, and so does a witnessed promissory note, but it is necessary to examine the statutes of each State on this matter. The statute is started afresh by any signed written promise to pay a debt, or by any signed written unqualified admission of the debt, or by any part payment of principal or interest, whether made before or after the statute has originally run. For instance, if money is due in 1902, and the debtor makes a payment in 1904, the debt will not be outlawed till 1910; or if no payment had been made and the debtor, when asked to pay the debt in 1909, after it was barred, should write, "I intend to pay that debt," or should even write no more than, "Of course that debt is due and I am sorry I have not paid it," that would start the statute afresh, and the claim would not be out-

lawed until 1915. On a running account with mutual debts and credits the statute does not bar the account until six years after the date of the last item of the account. A trust does not become outlawed so long as the trustee continues to hold for the beneficiary, but if the trust were repudiated the statute would then begin to run at once, because it would be clear that the trustee no longer held the trust property as such. A bank deposit is not exactly a trust, but it is a liability to pay only on demand, and therefore the statute does not run except when and after a demand is made. If a cause of action is fraudulently concealed, the statute does not run while the concealment continues. If the debtor is out of the State the statute does not run during the period while he is out of the State,—that time is deducted; but there is generally this qualification, that if the debt becomes completely barred in some other State, while the creditor resided therein, it is thereafter barred in the first State.

468. **BANKER'S LIEN AND RIGHT OF SET-OFF.**—A word may be said in regard to the bank's right of lien and set-off. A bank has a lien on its customer's securities in its hands for any balance due it, unless the securities are held under some inconsistent arrangement. If, for instance, by the terms of a collateral note, collaterals are held merely to secure that note, the arrangement is inconsistent with their being held as security for a general balance. It is a good plan to have it provided in a col-

lateral note that the collateral may be applied to all indebtedness due to the bank. That provision may destroy the negotiability of the note, but frequently it is of more importance to a bank to have the benefit of all the collateral for all indebtedness than to have the note negotiable. The depositor's account is not tangible property and is therefore not something in regard to which one may speak of as a lien. It is legally merely a debt due from the bank to its depositor; but a right to set off its own claims against this debt is in effect the equivalent of a lien. May a bank set off against a depositor's drawing account a note made by him due to the bank? Yes, it may if the note is due; if the note is not due, it cannot set it off. As a general rule, that would be agreed both by bank men and lawyers, but would it not make a difference if the depositor was insolvent? It is, indeed, only in that case that a bank would claim to be entitled to set off against a general account an unmatured note of a depositor. It has been held in Massachusetts and some other States that the bank has no right to set off an unmatured note against the depositor's account, even if the depositor is insolvent. In some States the law is otherwise; and the National Bankruptcy Law in effect allows such a set-off in case of bankruptcy, for the National Bankruptcy Law provides that any provable claim may be set off by the creditor against a claim due from him to the bankrupt estate. Now the bankrupt depositor's general ac-

count would be a debt due from the bank, and the note would be a provable claim, even though not yet matured, so the bank could set off the unmatured note against the account. In States like Massachusetts, therefore, where the State courts deny the right to set off an unmatured note of an insolvent, it is better for the bank when it has a general deposit account with the balance in favor of the insolvent, to have the insolvent's estate settled under the bankruptcy law than under a general assignment; for under a general assignment the bank would have to pay the drawer's account in full and then take a dividend on the unmatured note, whereas in bankruptcy one could be set off against the other. Sometimes a question in regard to a banker's lien or right of set-off arises in regard to partnerships. Suppose a partnership debt due to a bank which has also in its hands securities belonging to an individual partner. May the bank apply the partner's securities to that partnership debt, which we are assuming is matured? We should say yes, for each partner in a partnership owes a partnership debt, and his individual property is subject to seizure. But suppose the partner individually owed the bank a matured note; then the bank could not apply in payment securities belonging to the firm, because a firm does not owe the individual partner's debt. For the assertion of a right of lien or set-off the two claims must be in the same right; that is, property belonging to A as

a trustee cannot be held to satisfy a claim against him personally, or if money is received for a specified purpose it cannot be applied to satisfy a personal liability.

469. **COLLECTIONS AND TRANSITS.**—A large part of the business of a bank consists in collecting negotiable paper for others. The duties required by this work can be fully understood only by one who has some understanding both of the law of negotiable paper and of the law of agency. A collecting bank is an agent, and the nature of its duties require it to employ sub-agents. Generally the authority of an agent can not be delegated, but the collection of negotiable paper necessarily requires the employment of sub-agents when the paper is payable in another city than that in which the bank with which the paper was originally deposited for collection does business and therefore such employment is justified. The duty of the bank in a general way may be summed up in a single sentence. It must use due diligence in seeing that paper is either paid or the parties to it charged with liability. This sentence, however, involves a good many things. In the first place the bank of deposit must select a reasonable means of collection. Frequently it is the custom of banks instead of sending paper to be collected directly to the city where it is payable, to send it by way of intermediate points. How far the bank of deposit is justified in doing this, and especially how far it is justified for its own convenience

or profit in sending paper by indirect routing to the point of destination, is a matter which has not been much before the courts. The contract of the bank of deposit with its customer undoubtedly includes, as one of its terms, that the collection shall be made according to reasonable and usual banking customs. This would justify any routing which did not obviously increase the normal danger of loss. Where paper is payable on time, the presentment at the place of payment must be on a fixed day. Any routing which delayed presentment beyond that day when by another mode presentment might have been made on time, would subject the bank to liability. Where the paper is payable on demand, the presentment must be made in a reasonable time, and the bank of deposit must not use a means of routing which will delay the arrival of the paper at the place of payment beyond a reasonable time. Further than this, it would not ordinarily be liable.

A bank with which paper is deposited for collection will not generally be liable if it waits until the extreme limit of time allowed by law for presentment, even though as matters turn out payment would have been secured by immediate presentment and was lost by the slight delay which the bank made. In special cases, however, this will not be true. The bank must observe instructions given to it by its customers, and these instructions may include a degree of diligence beyond that which the law would otherwise require. Moreover, if the bank

itself should get information indicating that loss would probably occur if presentment was not made with more than ordinary diligence, exceptional promptness would be required.

Paper endorsed for collection still remains equitably at least the property of the depositor until it is ultimately collected. Therefore if a bank fails, having in its possession paper endorsed for collection, this will not form part of the general assets of creditors, but will be returned to the depositor. When collection has actually been made, however, the bank is generally authorized to credit the proceeds as a mere debt. If an agent of the bank of deposit should fail without remitting the proceeds to the bank of deposit, the decisions of a few States compel the bank of deposit to make good the loss; that is, it is held liable absolutely for the default of its agent, the collecting bank; but the courts of most States do not hold the bank of deposit liable unless it was negligent in its selection of a correspondent.

Where on presentment, paper deposited for collection is dishonored, it is the duty of the bank to charge parties secondarily liable; and failure to do so will make it liable itself to its customer. It will not be liable, however, to other parties to the instrument. Thus if a bank failed to charge the first indorser of negotiable paper and the second indorser was forced to pay, the latter has no right of action against the bank for failing to perform its duty.

CHAPTER VII

Table of Corresponding Sections of the

X	1	2	3	4	5	6	7	8	9	10	11	12	13
N.I.L.	Ala.	Ariz.	Col.	Conn.	D. C.	Fla.	Ida.	Ill.	Kan.	Ky.	Md.	Mass.	Mich.
1	4958	3304	4464	4171	1305	2935	3458	1	4540	1897	20	18	3
2	4959	3305	4465	4172	1306	2936	3459	2	4541	1898	21	19	4
3	4960	3306	4466	4173	1307	2937	3460	3	4542	1899	22	20	5
4	4961	3307	4467	4174	1308	2938	3461	4	4543	1900	23	21	6
5	4962	3308	4468	4175	1309	2939	3462	5	4544	1901	24	22	7
6	4963	3309	4469	4176	1310	2940	3463	6	4545	1902	25	23	8
7	4965	3310	4470	4177	1312	2941	3464	7	4546	1903	26	24	9
8	4965	3311	4471	4178	1312	2942	3465	8	4547	1904	27	25	10
9	4966	3312	4472	4179	1313	2943	3466	9	4548	1905	28	26	11
10	4967	3313	4473	4180	1314	2944	3467	10	4549	1906	29	27	12
11	4968	3314	4474	4181	1315	2945	3468	11	4550	1907	30	28	13
12	4969	3315	4475	4182	1316	2946	3469	12	4551	1908	31	29	14
13	4970	3316	4476	4183	1317	2947	3470	13	4552	1909	32	30	15
14	4971	3317	4477	4184	1318	2948	3471	14	4553	1910	33	31	16
15	4972	3318	4478	4185	1319	2949	3472	15	4554	1911	34	32	17
16	4973	3319	4479	4186	1320	2950	3473	16	4555	1912	35	33	18
17	4974	3320	4480	4187	1321	2951	3474	17	4556	1913	36	34	19
18	4975	3321	4481	4188	1322	2952	3475	18	4557	1914	37	35	20
19	4976	3322	4482	4189	1323	2953	3476	19	4558	1915	38	36	21
20	4977	3323	4483	4190	1324	2954	3477	20	4559	1916	39	37	22
21	4978	3324	4484	4191	1325	2955	3478	21	4560	1917	40	38	23
22	4979	3325	4485	4192	1326	2956	3479	22	4561	1918	41	39	24
23	4980	3326	4486	4193	1327	2957	3480	23	4562	1919	42	40	25
24	4981	3327	4487	4194	1328	2958	3481	24	4563	1884	43	41	26
25	4982	3328	4488	4195	1329	2959	3482	25	4564	1885	44	42	27
26	4982	3329	4489	4196	1330	2960	3483	26	4565	1886	45	43	28
27	4982	3330	4490	4197	1331	2961	3484	27	4566	1887	46	44	29
28	4983	3331	4491	4198	1332	2962	3485	28	4567	1888	47	45	30
29	4984	3332	4492	4199	1333	2963	3486	29	4568	1889	48	46	31
30	4985	3333	4493	4200	1334	2964	3487	30	4569	1939	49	47	32
31	4986	3334	4494	4201	1335	2965	3488	31	4570	1940	50	48	33
32	4987	3335	4495	4202	1336	2966	3489	32	4571	1941	51	49	34
33	4988	3336	4496	4203	1337	2967	3490	33	4572	1942	52	50	35
34	4989	3337	4497	4204	1338	2968	3491	34	4573	1943	53	51	36
35	4990	3338	4498	4205	1339	2969	3492	35	4574	1944	54	52	37

CHAPTER VII

Law in the Various States and Territories

14	15	16	17	18	19	20	21	22	23	24	25	26	27
Mon.	Neb.	N. H.	N. Y.	N. C.	N. D.	Okl.	Ohio	Ore.	R. I.	S. D.	Tenn.	Utah	Wis.
5849	1	1	20	2151	6303	1	3171	4403	7	1	1	1553	1675-1
5850	2	2	21	2152	6304	2	3171a	4404	8	2	2	1554	1675-2
5851	3	3	22	2153	6305	3	3171b	4405	9	3	3	1555	1675-3
5852	4	4	23	2156	6306	4	3171c	4406	10	4	4	1556	1675-4
5853	5	5	24	2154	6307	5	3171d	4407	11	5	5	1557	1675-5
5854	6	6	25	2155	6308	6	3171e	4408	12	6	6	1558	1675-6
5855	7	7	26	2157	6309	7	3171f	4409	13	7	7	1559	1675-7
5856	8	8	27	2158	6310	8	3171g	4410	14	8	8	1560	1675-8
5857	9	9	28	2159	6311	9	3171h	4411	15	9	9	1561	1675-9
5858	10	10	29	2160	6312	10	3171i	4412	16	10	10	1562	1675-10
5859	11	11	30	2161	6313	11	3171j	4413	17	11	11	1563	1675-11
5860	12	12	31	2162	6314	12	3171k	4414	18	12	12	1564	1675-12
5861	13	13	32	2163	6315	13	3171l	4415	19	13	13	1565	1675-13
5862	14	14	33	2164	6316	14	3171m	4416	20	14	14	1566	1675-14
5863	15	15	34	2165	6317	15	3171n	4417	21	15	15	1567	1675-15
5864	16	16	35	2166	6318	16	3171o	4418	22	16	16	1568	1675-16
5865	17	17	36	2341	6319	17	3171p	4419	23	17	17	1569	1675-17
5866	18	18	37	2167	6320	18	3171q	4420	24	18	18	1570	1675-18
5867	19	19	38	2168	6321	19	3171r	4421	25	19	19	1571	1675-19
5868	20	20	39	2169	6322	20	3171s	4422	26	20	20	1572	1675-20
5869	21	21	40	2170	6323	21	3171t	4423	27	21	21	1573	1675-21
5870	22	22	41	2180	6324	22	3171u	4424	28	22	22	1574	1675-22
5871	23	23	42	2171	6325	23	3171v	4425	29	23	23	1575	1675-23
5872	24	24	50	2172	6326	24	3171w	4426	30	24	24	1576	1675-50
5873	25	25	51	2173	6327	25	3171x	4427	31	25	25	1577	1675-51
5874	26	26	52	2174	6328	26	3171y	4428	32	26	26	1578	1675-52
5875	27	27	53	2175	6329	27	3171z	4429	33	27	27	1579	1675-53
5876	28	28	54	2176	6330	28	3172	4430	34	28	28	1580	1675-54
5877	29	29	55	2177	6331	29	3172a	4431	35	29	29	1581	1675-55
5878	30	30	60	2178	6332	30	3172b	4432	36	30	35	1582	1676
5879	31	31	61	2179	6333	31	3172c	4433	37	31	31	1583	1676-1
5880	32	32	62	2181	6334	32	3172d	4434	38	32	32	1584	1676-2
5881	33	33	63	2182	6335	33	3172e	4435	39	33	33	1585	1676-3
5882	34	34	64	2183	6336	34	3172f	4436	40	34	34	1586	1676-4
5883	35	35	65	2184	6337	35	3172g	4437	41	35	35	1587	1676-5

X	1	2	3	4	5	6	7	8	9	10	11	12	13
N.I.L.	Ala.	Ariz.	Col.	Conn.	D.C.	Fla.	Ida.	Ill.	Kan.	Ky.	Md.	Mas.	Mich
36	4991	3339	4499	4206	1340	2970	3493	36	4575	1945	55	53	38
37	4992	3340	4500	4207	1341	2971	3494	37	4576	1946	56	54	39
38	4993	3341	4501	4208	1342	2972	3495	38	4577	1947	57	55	40
39	4994	3342	4502	4209	1343	2973	3496	39	4578	1948	58	56	41
40	4995	3343	4503	4210	1344	2974	3497	40	4579	1949	59	57	42
41	4996	3344	4504	4211	1345	2975	3498	41	4580	1950	60	58	43
42	1997	3345	4505	4212	1346	2976	3499	42	4581	1951	61	59	44
43	4998	3346	4506	4213	1347	2977	3500	43	4582	1952	62	60	45
44	4999	3347	4507	4214	1348	2978	3501	44	4583	1953	63	61	46
45	5000	3348	4508	4215	1349	2979	3502	45	4584	1954	64	62	47
46	5001	3349	4509	4216	1350	2979	3503	46	4585	1955	65	63	48
47	5002	3350	4510	4217	1351	2980	3504	47	4586	1956	66	64	49
48	5003	3351	4511	4218	1352	2981	3505	48	4587	1957	67	65	50
49	5004	3352	4512	4219	1353	2982	3506	49	4588	1958	68	66	51
50	5005	3353	4513	4220	1354	2983	3507	50	4589	1958	69	67	52
51	5006	3354	4514	4221	1355	2984	3508	51	4590	1920	70	68	53
52	5007	3355	4515	4222	1356	2985	3509	52	4591	1921	71	69	54
53	5008	3356	4516	4223	1357	2986	3510	53	4592	1922	72	70	55
54	5009	3357	4517	4224	1358	2987	3511	54	4593	1923	73	71	56
55	5010	3358	4518	4225	1359	2988	3512	55	4594	1924	74	72	57
56	5011	3359	4519	4226	1360	2989	3513	56	4595	1925	75	73	58
57	5012	3360	4520	4427	1361	2990	3514	57	4596	1926	76	74	59
58	5013	3361	4521	4228	1362	2991	3515	58	4597	1927	77	75	60
59	5014	3362	4522	4229	1363	2992	3516	59	4598	1928	78	76	61
60	5015	3363	4523	4230	1364	2993	3517	60	4599	1929	79	77	62
61	5016	3364	4524	4231	1365	2994	3518	61	4600	1930	80	78	63
62	5017	3365	4525	4232	1366	2995	3519	62	4601	1931	81	79	64
63	5018	3366	4526	4233	1367	2996	3520	63	4602	1932	82	80	65
64	5019	3367	4527	4234	1368	2947	3521	64	4603	1933	83	81	66
65	5020	3368	4528	4235	1369	2948	3522	65	4604	1934	84	82	67
66	5021	3369	4529	4236	1370	2999	3523	66	4605	1935	85	83	68
67	5022	3370	4530	4237	1371	3000	3524	67	4606	1936	86	84	69
68	5023	3371	4531	4238	1372	3001	3525	68	4607	1937	87	85	70
69	5024	3372	4532	4239	1373	3002	3526	69	4608	1938	88	86	71
70	5025	3373	4533	4240	1374	3003	3527	70	4609	1990	89	87	72
71	5026	3374	4534	4241	1375	3004	3528	71	4610	1991	90	88	73
72	5027	3375	4535	4242	1376	3005	4529	72	4611	1992	91	89	74
73	5028	3376	4536	4243	1377	3006	3530	73	4612	1993	92	90	75
74	5029	3377	4537	4244	1378	3007	3531	74	4613	1994	93	91	76
75	5030	3378	4538	4245	1379	3008	3532	75	4614	1995	94	92	77

14	15	16	17	18	19	20	21	22	23	24	25	26	27
Mon.	Neb.	N. H.	N. Y.	N. C.	N. D.	Okl.	Ohio	Ore.	R. I.	S. D.	Tenn.	Utah	Wis.
5884	36	36	66	2185	6338	36	3172h	4438	42	36	36	1588	1676-6
5885	37	37	67	2186	6339	37	3172i	4439	43	37	37	1589	1676-7
5886	38	38	68	2187	6340	38	3172j	4440	44	38	38	1590	1676-8
5887	39	39	69	2188	6341	39	3172k	4441	45	39	39	1591	1676-9
5888	40	40	70	2189	6342	40	3172l	4442	46	40	40	1592	1676-10
5889	41	41	71	2190	6343	41	3172m	4443	47	41	41	1593	1676-11
5890	42	42	72	2191	6344	42	3173n	4444	48	42	42	1594	1676-12
5891	43	43	73	2192	6345	43	3172o	4445	49	43	43	1595	1676-13
5892	44	44	74	2193	6346	44	3172p	4446	50	44	44	1596	1676-14
5893	45	45	75	2194	6347	45	3172q	4447	51	45	45	1597	1676-15
5894	46	46	76	2195	6348	46	3172r	4448	52	46	46	1598	1676-16
5895	47	47	77	2196	6349	47	3172s	4449	53	47	47	1599	1676-17
5896	48	48	78	2197	6350	48	3172t	4450	54	48	48	1600	1676-18
5897	49	49	79	2198	6351	49	3172u	4451	55	49	49	1601	1676-19
5898	50	50	80	2199	6352	50	3172v	4452	56	50	50	1602	1676-20
5899	51	51	90	2200	6353	51	3172w	4453	57	51	51	1603	1676-21
5900	52	52	91	2201	6354	52	3172x	4454	58	52	52	1604	1676-22
5901	53	53	92	2202	6355	53	3172y	4455	59	53	53	1605	1676-23
5902	54	54	93	2203	6356	54	3172z	4456	60	54	54	1606	1676-24
5903	55	55	94	2204	6357	55	3173	4457	61	55	55	1607	1676-25
5904	56	56	95	2205	6358	56	3173a	4458	62	56	56	1608	1676-26
5905	57	57	96	2206	6359	57	3173b	4459	63	57	57	1609	1676-27
5906	58	58	97	2207	6360	58	3173c	4460	64	58	58	1610	1676-28
5907	59	59	98	2208	6361	59	3173d	4461	65	59	59	1611	1676-29
5908	60	60	110	2209	6362	60	3173e	4462	66	60	60	1612	1677
5909	61	61	111	2210	6363	61	3173f	4463	67	61	61	1613	1677-1
5910	62	62	112	2211	6364	62	3173g	4464	68	62	62	1614	1677-2
5911	63	63	113	2212	6365	63	3173h	4465	69	63	63	1615	1677-3
5912	64	64	114	2213	6366	64	3173i	4466	70	64	64	1616	1677-4
5913	65	65	115	2214	6367	65	3173j	4467	71	65	65	1617	1677-5
5914	66	66	116	2215	6368	66	3173k	4468	72	66	66	1618	1677-6
5915	67	67	117	2216	6369	67	3173l	4469	73	67	67	1619	1677-7
5916	68	68	118	2217	6370	68	3173m	4470	74	68	68	1620	1677-8
5917	69	69	119	2218	6371	69	3173n	4471	75	69	69	1621	1677-9
5918	70	70	130	2219	6372	70	3173o	4472	76	70	70	1622	1678
5919	71	71	131	2220	6373	71	3173p	4473	77	71	71	1623	1678-1
5920	72	72	132	2221	6374	72	3173q	4474	78	72	72	1624	1678-2
5921	73	73	133	2222	6375	73	3173r	4475	79	73	73	1625	1678-3
5922	74	74	134	2223	6376	74	3173s	4476	80	74	74	1626	1678-4
5923	75	75	135	2224	6377	75	3173t	4477	81	75	75	1627	1678-5

X	1	2	3	4	5	6	7	8	9	10	11	12	13
N.I.L.	Ala.	Ariz.	Col.	Conn.	D.C.	Fla.	Ida.	Ill.	Kan.	Ky.	Md.	Mass.	Mich
76	5031	3379	4539	4246	1380	3009	3533	76	4615	1996	95	93	78
77	5032	3380	4540	4247	1381	3010	3534	77	4616	1997	96	94	79
78	5033	3381	4541	4248	1382	3011	3535	78	4617	1998	97	95	80
79	5034	3382	4542	4549	1383	3012	3536	79	4618	1999	98	96	81
80	5035	3383	4543	4250	1384	3012	3537	80	4619	2000	99	97	82
81	5036	3384	4544	4251	1385	3013	3538	81	4620	2001	100	98	83
82	5037	3385	4545	4252	1386	3014	3539	82	4621	2002	101	99	84
83	5038	3386	4546	4253	1387	3015	3540	83	4622	2003	102	100	85
84	5038	3387	4547	4254	1388	3016	3541	84	4623	2004	103	101	86
85	5039	3388	4548	4255	1389	3017	3542	85	4624	2005	104	102	87
86	5040	3389	4549	4256	1390	3017	3543	86	4625	2006	105	103	88
87	5041	3390	4550	4257	1391	3018	3544	87	4626	2007	106	104	89
88	5042	3391	4551	4258	1392	3019	3545	88	4627	2008	107	105	90
89	5043	3392	4552	4259	1393	3020	3546	89	4628	1960	108	106	91
90	5044	3393	4553	4260	1394	3021	3547	90	4629	1961	109	107	92
91	5045	3394	4554	4261	1395	3022	3548	91	4630	1962	110	108	93
92	5046	3395	4555	4262	1396	3023	3549	92	4631	1963	111	109	94
93	5047	3396	4556	4263	1397	3024	3550	93	4632	1964	112	110	95
94	5047	3397	4557	4264	1398	3025	3551	94	4633	1965	113	111	96
95	5048	3398	4558	4265	1399	3026	3552	95	4634	1966	114	112	97
96	5048	3399	4559	4266	1400	3027	3553	96	4635	1967	115	113	98
97	5049	3400	4560	4267	1401	3027	3554	97	4636	1968	116	114	99
98	5050	3401	4561	4268	1402	3028	3555	98	4637	1969	117	115	100
99	5051	3402	4562	4269	1403	3029	3556	99	4638	1970	118	116	101
100	5052	3403	4563	4270	1404	3029	3557	100	4639	1971	119	117	102
101	5053	3404	4564	4271	1405	3030	3558	101	4640	1972	120	118	103
102	5054	3405	4565	4272	1406	3031	3559	102	4641	1973	121	119	104
103	5055	3406	4566	4273	1407	3031	3560	103	4642	1974	122	120	105
104	5056	3407	4567	4274	1408	3032	3561	104	4643	1975	123	121	106
105	5057	3408	4568	4275	1409	3033	3562	105	4644	1976	124	122	107
106	5056	3409	4569	4276	1410	3033	3563	106	4645	1977	125	123	108
107	5058	3410	4570	4277	1411	3034	3564	107	4646	1978	126	124	109
108	5059	3411	4571	4278	1412	3035	3565	108	4647	1979	127	125	110
109	5060	3412	4572	4279	1413	3036	3566	109	4648	1980	128	126	111
110	5060	3413	4573	4280	1414	3036	3567	110	4649	1981	129	127	112
111	5060	3414	4574	4281	1415	3036	3568	111	4650	1982	130	128	113
112	5061	3415	4575	4282	1416	3037	3569	112	4651	1983	131	129	114
113	5062	3416	4576	4283	1417	3038	3570	113	4652	1984	132	130	115
114	5063	3417	4577	4284	1418	3039	3571	114	4653	1985	133	131	116
115	5064	3418	4578	4285	1419	3039	3572	115	4654	1986	134	132	117

14	15	16	17	18	19	20	21	22	23	24	25	26	27
Mon.	Neb.	N. H.	N. Y.	N. C.	N. D.	Okl.	Ohio	Ore.	R. I.	S. D.	Tenn.	Utah	Wis.
5924	76	76	136	2225	6378	76	3173u	4478	82	76	76	1628	1678-6
5925	77	77	137	2226	6379	77	3173v	4479	83	77	77	1629	1678-7
5926	78	78	138	2227	6380	78	3173w	4480	84	78	78	1630	1678-8
5927	79	79	139	2228	6381	79	3173x	4481	85	79	79	1631	1678-9
5928	80	80	140	2229	6382	80	3173y	4482	86	80	80	1632	1678-10
5929	81	81	141	2230	6383	81	3173z	4483	87	81	81	1633	1678-11
5930	82	82	142	2231	6384	82	3174	4484	88	82	82	1634	1678-12
5931	83	83	143	2232	6385	83	3174a	4485	89	83	83	1635	1678-13
5932	84	84	144	2233	6386	84	3174b	4486	90	84	84	1636	1678-14
5933	85	85	145	2234	6387	85	3174c	4487	91	85	85	1637	1678-15
5934	86	86	146	2236	6388	86	3174d	4488	92	86	86	1638	1678-16
5935	...	87	147	2237	6389	87	3174e	4489	93	...	87	1639	1678-17
5936	87	88	148	2238	6390	88	3174f	4490	94	87	88	1640	1678-18
5937	88	89	160	2239	6391	80	3174g	4491	85	88	89	1641	1678-19
5938	89	90	161	2240	6392	90	3174h	4492	96	89	90	1642	1678-20
5939	90	91	162	2241	6393	91	3174i	4493	97	90	91	1643	1678-21
5940	91	92	163	2242	6394	92	3174j	4494	98	91	92	1644	1678-22
5941	92	93	164	2243	6395	93	3174k	4495	99	92	93	1645	1678-23
5942	93	94	165	2244	6396	94	3174 l	4496	100	93	94	1646	1678-24
5943	94	95	166	2245	6397	95	3174m	4497	101	94	95	1647	1678-25
5944	95	96	167	2246	6398	96	3174n	4498	102	95	96	1648	1678-26
5945	96	97	168	2247	6399	97	3174o	4499	103	96	97	1649	1678-27
5946	97	98	169	2248	6400	98	3174p	4500	104	97	98	1650	1678-28
5947	98	99	170	2249	6401	99	3174q	4501	105	98	99	1651	1678-29
5948	99	100	171	2250	6402	100	3174r	4502	106	99	100	1652	1678-30
5949	100	101	172	2251	6403	101	3174s	4503	107	100	101	1653	1678-31
5950	101	102	173	2252	6404	102	3174t	4504	108	101	102	1654	1678-32
5951	102	103	174	2253	6405	103	3174u	4505	109	102	103	1655	1678-33
5952	103	104	175	2254	6406	104	3174v	4506	110	103	104	1656	1678-34
5953	104	105	176	2255	6407	105	3174w	4507	111	104	105	1657	1678-35
5954	105	106	177	2256	6408	106	3174x	4508	112	105	106	1658	1678-36
5955	106	107	178	2257	6409	107	3174y	4509	113	106	107	1659	1678-37
5956	107	108	179	2258	6410	108	3174z	4510	114	107	108	1660	1678-38
5957	108	109	180	2259	6411	109	3175	4511	115	108	109	1661	1678-39
5958	109	110	181	2260	6412	110	3175a	4512	116	109	110	1662	1678-40
5959	110	111	182	2261	6413	111	3175b	4513	117	110	111	1663	1678-41
5960	111	112	183	2262	6414	112	3175c	4514	118	111	112	1664	1678-42
5961	112	113	184	2263	6415	113	3175d	4515	119	112	113	1665	1678-43
5962	113	114	185	2264	6416	114	3175e	4516	120	113	114	1665x	1678-44
5963	114	115	186	2265	6417	115	3175f	4517	121	114	115	1665x1	1678-45

X N.I.L.	1 Ala.	2 Ariz.	3 Col.	4 Conn.	5 D.C.	6 Fla.	7 Ida.	8 Ill.	9 Kan.	10 Ky.	11 Md.	12 Mass.	13 Mich.
116	5065	3419	4579	4286	1420	3039	3573	115	4655	1987	135	133	118
117	5066	3420	4580	4287	1421	3040	3574	116	4656	1988	136	134	119
118	5067	3421	4581	4288	1422	3041	3575	117	4657	1989	137	135	120
119	5068	3422	4582	4289	1423	3042	3576	118	4658	1890	138	136	121
120	5069	3423	4683	4290	1424	3042	3577	119	4659	1891	139	137	122
121	5070	3424	4584	4291	1425	3043	3578	120	4660	1892	140	138	123
122	5071	3425	4585	4292	1426	3044	3579	121	4661	1893	141	139	124
123	5072	3426	4586	4293	1427	3045	3580	122	4662	1894	142	140	125
124	5073	3427	4587	4294	1428	3046	3581	123	4663	1895	143	141	126
125	5074	3428	4588	4295	1429	3046	3582	124	4664	1896	144	142	127
126	5075	3429	4589	4296	1430	3047	3583	125	4665	1826	145	143	128
127	5076	3430	4590	4297	1431	3047	3584	126	4666	1827	146	144	129
128	5077	3431	4591	4298	1432	3047	3585	127	4667	1828	147	145	130
129	5078	3432	4592	4299	1433	3048	3586	128	4668	1829	148	146	131
130	5079	3433	4593	4300	1434	3049	3587	129	4669	1830	149	147	132
131	5080	3434	4594	4301	1435	3050	3588	130	4670	1831	150	148	133
132	5081	3435	4595	4302	1436	3051	3589	131	4671	1832	151	149	134
133	5082	3436	4596	4303	1437	3051	3590	132	4672	1833	152	150	135
134	5083	3437	4597	4304	1438	3051	3591	133	4673	1834	153	151	136
135	5084	3438	4598	4305	1439	3052	3592	134	4674	1835	154	152	137
136	5085	3439	4599	4306	1440	3053	3593	135	4675	1836	155	153	138
137	5086	3440	4600	4307	1441	3054	3594	...	4676	1837	156	154	139
138	5087	3441	4601	4308	1442	3055	3595	136	4677	1838	157	155	140
139	5088	3442	4602	4309	1443	3056	3596	138	4678	1839	158	156	141
140	5089	3443	4603	4310	1444	3056	3597	139	4679	1840	159	157	142
141	5090	3444	4604	4311	1445	3056	3598	140	4680	1841	160	158	143
142	5091	3445	4605	4312	1446	3057	3599	141	4681	1842	161	159	144
143	5092	3446	4606	4313	1447	3058	3600	142	4682	1843	162	160	145
144	5093	3447	4607	4314	1448	3059	3601	143	4683	1844	163	161	146
145	5094	3448	4608	4315	1449	3060	3602	144	4684	1845	164	162	147
146	5094	3449	4609	4316	1450	3061	3603	145	4685	1846	165	163	148
147	5095	3450	4610	4317	1451	3062	3604	146	4686	1847	166	164	149
148	5095	3451	4611	4318	1452	3062	3605	147	4687	1848	167	165	150
149	5097	3452	4612	4319	1453	3063	3606	148	4688	1849	168	166	151
150	5098	3453	4613	4320	1454	3063	3607	149	4689	1850	169	167	152
151	5099	3454	4614	4321	1455	3064	3608	150	4690	1851	170	168	153
152	5100	3455	4615	4322	1456	3065	3609	151	4691	1875	171	169	154
153	5101	3456	4616	4323	1457	3066	3610	152	4692	1876	172	170	155
154	5102	3457	4617	4324	1458	3066	3611	153	4693	1877	173	171	156
155	5103	3458	4618	4325	1459	3067	3612	154	4694	1873	174	172	157

14 Mon.	15 No.	16 N. H.	17 N. Y.	18 N. C.	19 N. D.	20 Okla.	21 Ohio	22 Ore.	23 R. I.	24 S. D.	25 Tenn.	26 Utah	27 Wis.
5964	115	116	187	2266	6418	116	3175g	4518	122	115	116	1665x2	1678 46
5965	116	117	188	2267	6419	117	3175h	4519	123	116	117	1665x3	1678-47
5966	117	118	189	2268	6420	118	3175i	4520	124	117	118	1665x4	1678-48
5967	118	119	200	2269	6421	119	3175j	4521	125	118	119	1665x5	1679
5968	119	120	201	2270	6422	120	3175k	4522	126	119	120	1665x6	1679-1
5969	120	121	202	2271	6423	121	3175 l	4523	127	120	121	1665x7	1679-2
5970	121	122	203	2272	6424	122	3175m	4524	128	121	122	1665x8	1679-3
5971	122	123	204	2273	6425	123	3175n	4525	129	122	123	1665x9	1679-4
5972	123	124	205	2274	6426	124	3175o	4526	130	123	124	1665x10	1679-5
5973	124	125	206	2275	6427	125	3175p	4527	131	124	125	1665x11	1679-6
5974	125	126	210	2276	6428	126	3175q	4528	132	125	126	1664x12	1680
5975	126	127	211	2277	6429	127	3175r	4529	133	126	127	1665x13	1680a
5976	127	128	212	2278	6430	128	3175s	4530	134	127	128	1665x14	1680b
5977	128	129	213	2279	6431	129	3175t	4531	135	128	139	1665x15	1680c
5978	129	130	214	2280	6432	130	3175u	4532	136	129	130	1665x16	1680d
5979	130	131	215	2281	6433	131	3175v	4533	137	130	131	1665x17	1680e
5980	131	132	220	2282	6434	132	3175w	4534	138	131	132	1665x18	1680f
5981	132	133	221	2283	6435	133	3175x	4535	139	132	183	1665x19	1680g
5982	133	134	222	2284	6436	134	3175y	4536	140	133	134	1665x20	1680h
5983	134	135	223	2285	6437	135	3175z	4537	141	134	135	1665x21	1680i
5984	135	136	224	2286	6438	136	3176	4538	142	135	136	1665x22	1680j
5985	136	137	225	2287	6439	137	3176a	4539	143	...	137	1665x23	1680k
5986	137	138	226	2288	6440	138	3176b	4540	144	136	138	1665x24	1680 l
5987	138	139	227	2289	6441	139	3176c	4541	145	137	139	1665x25	1680m
5988	139	140	228	2290	6442	140	3176d	4542	146	138	140	1665x26	1680n
5989	140	141	229	2291	6443	141	3176e	4543	147	139	141	1665x27	1680o
5990	141	142	230	2292	6444	142	3176 f	4544	148	140	142	1665x28	1680p
5991	142	143	240	2293	6445	143	3176g	4545	149	141	143	1665x29	1681
5992	143	144	241	2294	6446	144	3176h	4546	150	142	144	1665x30	1681-1
5993	144	145	242	2295	6447	145	3176 i	4547	151	143	145	1665x31	1681-2
5994	145	146	243	2296	6448	146	3176 j	4548	152	144	146	1665x32	1681-3
5995	146	147	244	2297	6449	147	3176k	4549	153	145	147	1665x33	1681-4
5996	147	148	245	2298	6450	148	3176 l	4550	154	146	148	1665x35	1681-5
5997	148	149	246	2299	6451	149	3176m	4551	155	147	149	1665x35	1681-6
5998	149	150	247	2300	6452	150	3176n	4552	156	148	150	1665x36	1681-7
5999	150	151	248	2301	6453	151	3176o	4553	157	149	151	1665x37	1681-8
6000	151	152	260	2302	6454	152	3176p	4554	158	150	152	1665x38	1681-9
6001	152	153	261	2303	6455	153	3176q	4555	159	151	153	1665x39	1681-10
6002	153	154	262	2304	6456	154	3176r	4556	160	152	154	1665x40	1681-11
6003	154	155	263	2305	6457	155	3176s	4557	161	153	155	1665x41	1681-12

X	1	2	3	4	5	6	7	8	9	10	11	12	13
N.I.L.	Ala.	Ariz.	Col.	Conn.	D. C.	Fla.	Ida.	Ill.	Kan.	Ky.	Md.	Mass.	Mich.
156	5104	3459	4619	4326	1460	3067	3613	155	4695	1879	175	173	158
157	5105	3460	4620	4327	1461	3068	3614	156	4696	1880	176	174	159
158	5106	3461	4621	4328	1462	3069	3615	157	4697	1881	177	175	160
159	5107	3462	4622	4329	1463	3070	3616	158	4698	1882	178	176	161
160	5108	3463	4623	4330	1464	3071	3617	159	4699	1883	179	177	162
161	5109	3464	4624	4331	1465	3073	3618	160	4700	1852	180	178	163
162	5110	3465	4625	4332	1466	3074	3619	161	4701	1853	181	179	164
163	5111	3466	4626	4333	1467	3075	3620	162	4702	1854	182	180	165
164	5112	3467	4627	4334	1468	3076	3621	163	4703	1855	183	181	166
165	5113	3468	4628	4335	1469	3076	3622	164	4704	1856	184	182	167
166	5114	3469	4629	4336	1470	3077	3623	165	4705	1857	185	183	168
167	5115	3470	4630	4337	1471	3078	3624	166	4706	1858	186	184	169
168	5116	3471	4631	4338	1472	3079	3625	167	4707	1859	187	185	170
169	5117	3472	4632	4339	1473	3080	3626	168	4708	1860	188	186	171
170	5118	3473	4633	4340	1474	3081	3627	169	4709	1861	189	187	172
171	5119	3474	4634	4341	1475	3082	3628	170	4710	1868	190	188	173
172	5120	3475	4635	4342	1476	3082	3629	171	4711	1869	191	189	174
173	5120	3476	4636	4343	1477	3083	3630	172	4712	1870	192	190	175
174	5121	3477	4637	4344	1478	3084	3631	173	4713	1871	193	191	176
175	5122	3478	4638	4345	1479	3085	3632	174	4714	1872	194	192	177
176	5123	3479	4639	4346	1480	3086	3633	175	4715	1873	195	193	178
177	5124	3480	4640	4347	1481	3086	3634	176	4716	1874	196	194	170
178	5125	3481	4641	4348	1482	3087	3635	177	4717	1862	197	195	180
179	5126	3482	4642	4349	1483	3088	3636	178	4718	1863	198	196	181
180	5127	3483	4643	4350	1484	3089	3637	179	4719	1864	199	197	182
181	5128	3484	4644	4351	1485	3090	3638	180	4720	1865	200	198	183
182	5129	3485	4645	4352	1486	3091	3639	181	4721	1866	201	199	184
183	5130	3486	4646	4353	1487	3092	3640	182	4722	1867	202	200	185
184	5031	3487	4647	4354	1488	3093	3641	183	4723	2009	203	201	186
185	5032	3487	4648	4355	1489	3094	3642	184	4724	2010	204	202	187
186	5033	3487	4649	4356	1490	3095	3643	185	4725	2011	205	203	188
187	5034	3487	4650	4357	1491	3096	3644	186	4726	2012	206	204	189
188	5035	3487	4651	4358	1492	3097	3645	187	4727	2013	207	205	190
189	5036	3487	4652	4359	1493	3098	3646	188	4728	2014	208	206	191
190	5037	....	4653	....	....	2934	3647	189	4533	....	13	....	1
191	5038	3487	4654	4170	1304	2934	3648	190	4534	1820	14	207	2
192	5039	3488	4655	4170	1304	2934	3649	191	4535	1821	15	208	2
193	5040	3489	4656	4170	1304	2934	3650	192	4536	1822	16	209	2
194	5041	3490	4657	4170	1304	2934	3651	193	4537	1823	17	210	2
195	5042	....	4658	4170	1304	....	3652	194	4538	1824	18	211	2
196	5043	3491	4659	4170	1304	2934	3653	195	4539	....	19	212	2
197	....	....	....	....	....	....	....	196	....	....	19	....	....
198	....	....	....	....	....	....	....	..	....	....	..	....	....

14	15	16	17	18	19	20	21	22	23	24	25	26	27
Mo.	Neb.	N. H.	N. Y.	N. C.	N. D.	Okla.	Ohio	Ore.	R. I.	S. D.	Tenn.	Utah	Wis.
6004	155	156	264	2306	6458	156	3176 t	4558	162	154	156	1665x42	1681-13
6005	156	157	265	2307	6459	157	3176u	4559	163	155	157	1665x43	1681-14
6006	157	158	266	2308	6460	158	3176v	4560	164	156	158	1665x44	1681-15
6007	158	159	267	2309	6461	159	3176w	4561	165	157	159	1665x45	1681-16
6008	159	160	268	2310	6462	160	3176x	4562	166	158	160	1665x46	1681-17
6009	160	161	280	2311	6463	161	3176y	4563	167	159	161	1665x47	1681-18
6010	161	162	281	2312	6464	162	3176z	4564	168	160	162	1665x48	1681-19
6011	162	163	282	2313	6465	163	3177	4565	169	161	163	1665x49	1681-20
6012	163	164	283	2314	6466	164	3177a	4566	170	162	164	1665x50	1681-21
6013	164	165	284	2315	6467	165	3177b	4567	171	163	165	1665x51	1681-22
6014	165	166	285	2316	6468	166	3177c	4568	172	164	166	1665x52	1681-23
6015	166	167	286	2317	6469	167	3177d	4569	173	165	167	1665x53	1681-24
6016	167	168	287	2318	6470	168	3177e	4570	174	166	168	1665x54	1681-25
6017	168	169	288	2319	6471	169	3177 f	4571	175	167	169	1665x55	1681-26
6018	169	170	289	2320	6472	170	3177g	4572	176	168	170	1665x56	1681-27
6019	170	171	300	2321	6473	171	3177h	4573	177	169	171	1665x57	1681-28
6020	171	172	301	2322	6474	172	3177 i	4574	178	170	172	1665x58	1681-29
6021	172	173	302	2323	6475	173	3177 j	4575	179	171	173	1665x59	1681-30
6022	173	174	303	2324	6476	174	3177k	4576	180	172	174	1665x60	1681-31
6023	174	175	304	2325	6477	175	3177 l	4577	181	173	175	1665x61	1681-32
6024	175	176	305	2326	6478	176	3177m	4578	182	174	176	1665x62	1681-33
6025	176	177	306	2327	6479	177	3177n	4579	183	175	177	1665x63	1681-34
6026	177	178	310	2328	6480	178	3177o	4580	184	176	178	1665x64	1681-35
6027	178	179	311	2329	6481	179	3177p	4581	185	177	179	1665x65	1681-36
6028	179	180	312	2330	6482	180	3177q	4582	186	178	180	1665x66	1681-37
6029	180	181	313	2331	6483	181	3177r	4583	187	179	181	1665x67	1681-38
6030	181	182	314	2332	6484	182	3177s	4584	188	180	182	1665x68	1681-39
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(X) In the following States, the numbering of the sections (in some cases the sub-sections) is the same as that of the commissioners' draft in the first column:

IOWA.—Code Supl. (1907), Tit. XV., sec. 3060a.

LOUISIANA.—Laws of 1904, Act. 64.

MINNESOTA.—Laws of 1913, c. 272.

MISSOURI.—Laws of 1905, page 243; Annot. Sts. (1906), ch. 5, sec. 463.

NEVADA.—Laws of 1907, ch. 62.

NEW JERSEY.—Laws of 1902, ch. 184.

NEW MEXICO.—Laws of 1907, ch. 83.

PENNSYLVANIA.—Laws of 1901, page 194.

VERMONT.—Laws of 1913, c. 99.

VIRGINIA.—Laws of 1897-8, ch. 866; Code (1904) ch. 133a, sec. 2841a.

WASHINGTON.—Laws of 1899, ch. 149.

WEST VIRGINIA.—Acts of 1907, ch. 81.

WYOMING.—Laws of 1905, ch. 43.

HAWAII.—Laws of 1907, ch. 89.

(1) Code 1907, ch. 115.

(2) R. S. 1901, Tit. XLIX.

(3) R. S. 1908, ch. XCV.

(4) G. S. 1902, Tit. 33, ch. 234.

(5) Code 1902, ch. XLVI.

(6) G. S. 1906, Tit. 5, ch. 2.

(7) Rev. Codes, 1908, Tit. 13.

(8) Laws of 1907, page 403.

(9) G. S. 1905, ch. 70.

(10) Sts. (1909), Art. 9.

(11) Pub. Gen. Laws, 1904, Art. 13.

(12) R. L. 1902, ch. 73.

(13) Pub. Acts., 1905, page 389.

(14) Civ. Code, 1907, Tit. XV.

(15) Comp. Sts. 1907, ch. 41.

(16) Laws of 1909, ch. 123.

- (17) Consol. Laws, ch. XXXVIII.
- (18) R. S. 1908, ch. 54.
- (19) Rev. Codes, 1905, ch. 90.
- (20) Laws of 1909, ch. XXIV.
- (21) Anno. Sts. 1787-1908, Tit. 1, Div. 2, ch. 2.
- (22) Anno. Codes and Cts. 1902, Tit. XXXVIII.
- (23) Gen. Laws 1909, Tit. XIX.
- (24) Laws of 1913.
- (25) Code Supl. 1897-1903.
- (26) Comp. Sts. 1907, Tit. 53.
- (26) Comp. Sts. 1907, Tit. 53.
- (27) Sts. Supl. 1899-1906, ch. 78.

CHAPTER VIII

Practical Exercises

In connection with "Negotiable Instruments" the following practical exercises are prescribed:

1. A having a claim for \$100 against B writes: "I assign my claim for \$100 against B to C or order" and gives the paper to C, who pays value for it. B becomes insolvent subsequently. Can C demand payment from A?

2. A promissory note, in ordinary form, contains the following addition: "This note is given for legal services to be rendered by the payee." Is this note negotiable?

3. A promise dated and signed is in this form: "I promise to pay A or order what I now owe A." Assuming that the signer owes A \$100 at the time this instrument is delivered, is it negotiable?

4. Is the following instrument negotiable: "I promise to pay A or order \$100 with exchange on New York and costs of collection. B'?"

5. A note is payable to the order of A "when the Panama Exposition opens." Is the note negotiable?

6. A collateral note, payable Jan. 1, 1914, contains a power to declare the note due at any time the holder shall feel insecure and to sell the collateral and apply the proceeds towards the payment of the note. Is this note negotiable?

7. After a note had been discounted at a bank and before its maturity the bank demanded further security. In compliance with this demand the maker brought his friend A to the bank who thereupon signed the note on the back. At maturity, the note being dishonored by the maker and notice sent to the endorser, is the endorser liable?

8. A wishing to make a Christmas present to his brother makes and delivers to him on Dec. 24th a promissory note signed by himself (A). Is A liable on this note at maturity?

9. A wishing to make a Christmas present to his brother B gives him on Christmas Day a note payable to bearer signed by C which A had received from C in payment for a horse. Can B enforce this note at maturity against C?

10. A lawyer who had done certain work for A sent A a bill for \$1,000. A returned by mail his check for \$500, on which was written "this check is in full payment for all my indebtedness to date." The lawyer took the check and cashed it but wrote at once to A: "I credit you with the amount of your check and enclose herewith my bill for the remaining \$500 due me." Assuming that \$1,000 was a reasonable charge for the lawyer's services can he recover the remaining \$500?

11. On the maturity of a note for \$100 made by A, A sent the holder a check for \$90, on which was written: "This check is in full payment for my note." The holder of the note cashed the check but

wrote at once to A: "I credit you with the amount of your check and now demand payment for the remaining \$10 due upon the note." Can the holder recover the remaining \$10?

12. The holder of a time bill fails to present it for acceptance. Is the drawer discharged?

13. When does certification of a check discharge the drawer and endorsers?

14. A bank cashes a check drawn upon it and later discovers that the drawer's name is forged. Can the bank recover the amount paid from the payee of the check who receives payment?

15. A note is payable to a person who afterwards becomes insane and is put under guardianship. (Such a person has no capacity to sign or endorse negotiable paper or make other contracts.) The insane payee endorses and delivers the note to X, who presents it for payment to the maker. Is the maker bound to pay?

16. A note is made payable to a corporation, which is not authorized by law to endorse negotiable paper, but does in fact endorse the note to a holder in due course. Can the latter recover from the maker?

17. "I assign this instrument." Is this an endorsement when written on the back of the note by the holder?

18. What difference in the rights of parties does it make whether an assignment upon a note is an endorsement or not?

19. If a bank having funds to meet a check refuses to pay it without excuse, is it liable to the holder of the check?

20. A check is endorsed for collection and deposited in a bank which fails and goes into the hands of a receiver before the check is collected. The depositor demands a return of the check. The receiver claims the right merely to credit its amount on the depositor's account on which a dividend will ultimately be paid. Which contention is right?

21. A sells a note of which he is the payee and endorses it without recourse for value to B. The maker's signature was forged though A had no knowledge of the fact. Is A liable to B?

22. A borrows money from a bank on his note endorsed by B and C, both of whom signed for A's accommodation. B's signature was above C's. A failed to pay the note at maturity and on receiving notice of the dishonor B paid the holder the amount of the note. Can B recover all or any of his payment from C?

23. An instrument payable to bearer was specially endorsed to A and by A was transferred by delivery. Can the maker demand from the holder A's endorsement before making payment?

24. A check payable to bearer was lost by the owner and a finder transferred it for value to one who took it in good faith. Can the original owner reclaim the check from this holder?

25. A check intended to be payable to John Y.

Brown and which was delivered to him by the drawer was on its face made payable to Jonathan Y. Browne. Can the drawee bank safely pay this check and if so, what form of endorsement should be made?

26. A check made payable to James Smith comes into the hands of a person of that name who was not intended to be the payee. He presents the check to the drawee bank and being known as James Smith obtains payment. Can the bank charge this payment to the customer's account?

27. A note is made payable to A and B. A endorses his own name and also B's and sells the note to a purchaser who buys in good faith. Can the latter collect from the maker?

28. By cleverly substituting a promissory note for a letter of introduction A induced B to sign a note payable to A's order when B supposed that he was merely signing a letter. A transferred the note to a holder in due course. Is B liable upon it?

29. A bank pays a check with a forged endorsement. What are its rights?

30. A bank pays a raised check. What are its rights?

31. A added to a note payable to him "with current exchange on New York," supposing erroneously that this exchange had been agreed to by the maker. What are A's rights against the maker on maturity of the note?

32. Is there any objection to buying negotiable paper from one who is not of age?

33. How may a negotiable instrument be discharged?

34. The maker of a note pays it before maturity but fails to take it up. Later the holder fraudulently sells and endorses the note to an innocent purchaser for value. What are his rights?

35. Does payment by an endorser discharge a negotiable instrument?

36. An instrument is issued with a blank for the amount. An amount is filled in, in excess of that authorized by the maker and when the amount is thus filled in, the note is discounted by a bank which took it in good faith before maturity but with knowledge that a blank had been filled in. What are the rights of the bank?

37. A, by false representations, induced B to make a note payable to him and he thereupon deposited it as collateral security at a bank to secure an old indebtedness. What is the liability of the maker of the note to the bank at maturity.

38. A, by threats and fraud, induced B to make a note payable to C for a debt due to C from B. C was ignorant until after he received the note of A's threats and fraud. Is B liable on the note?

39. A writes out a form of note payable to bearer and puts it in his safe intending to get it discounted the following day. It is stolen from his safe and

sold to a holder in due course. Can he recover on the note?

40. A gave a note in payment for a horse, which died before it was delivered to A. Is A liable on the note?

41. A holder of a note says to an endorser: "I discharge you from all liability on that note." Later the holder seeks to recover payment from the endorser. Can he do so?

42. The holder of a note before its maturity gives a written release to the maker from all liability. Thereafter he transfers the note to a holder in due course. Can the holder recover from the maker?

43. A makes a check payable to B for \$5. Owing to spaces left blank by A, B, by writing "hundred" after the word "five" and two zeros after the figure "five", makes the check seem to have been written originally for \$500. The drawee bank pays the check. Can it charge its customer for the payment?

44. A and B make a note which begins "We severally promise to pay," etc. Before maturity of the note the payee gives a release from liability to A. Can he thereafter recover from B?

45. A and B sign a note beginning as follows: "We jointly and severally promise to pay." The payee gives A a release from liability before maturity. Can the holder recover from B?

46. A and B make a note beginning as follows: "We jointly promise to pay", etc. The payee gives

A a release from liability. Can he afterwards hold B?

47. The holder of a note made by A and B jointly recovers judgment against them. Must he collect half the claim on the judgment from each maker?

48. The holder of an endorsed note, which had been dishonored at maturity and the endorser charged, enters into a contract with the endorser that he, the holder, will not require payment from the endorser for two months. Does this agreement affect the liability of the maker?

49. A savings bank holds a note signed by A as principal and B and C as sureties. A has deposited with the bank certain collateral security. Later desiring to use this collateral A gets the bank to accept instead other collateral of greater value. At maturity the note is unpaid and A is insolvent. Can the bank hold B and C?

50. How can one always safely discharge any party to a negotiable instrument without discharging the others?

51. The maker of a note has a claim in set-off against the payee by virtue of another debt. The payee of the note transfers it for value after maturity to one who has no knowledge of this claim in set-off. Can the maker when sued by the holder of the note set up his cross claim against the payee?

52. An oral agreement is made when a note is discounted that it need not be paid at maturity but

will be extended. Can this oral agreement be urged as a defence to a suit on the note at maturity?

53. A note made Jan. 5, 1913, is payable in thirty days. On what day should it be presented in order to charge endorsers?

54. When may an action at law on this note first be brought against the maker?

55. Suppose the note referred to in the preceding two questions had been procured by fraud and was presented on the morning of Feb. 4th and dishonored and later in the day was sold to a bona fide purchaser for value, without notice. Can he enforce it?

56. The holder of a time note, after maturity, endorses the note to A. What, if anything, must A do in order to charge this endorser?

57. Suppose the holder of a check negligently fails to cash it for a year and the bank on which it is drawn refuses payment because it is so old. Has the holder any right against the drawer?

58. A note with four endorsers is dishonored and the endorsers duly notified. May the holder obtain part payment from any one without discharging others?

59. A promissory note provides for the payment of interest at 4%. The legal rate is 6%. If the note is dishonored at maturity at what rate will interest be calculated after that date?

60. A note payable on demand contains no statement in regard to interest. It is dated Jan. 5, 1913, delivered Jan. 10th and presented for payment Jan.

25th and then dishonored. From which, if any, of these dates, will interest begin to run?

61. What is meant by re-exchange?

62. How may a party to a negotiable instrument payable on demand, or overdue, stop further interest?

63. A bill of exchange is payable ten days after sight. The payee holds it for three months and then presents it for acceptance which is refused and the drawer is promptly notified. Is the drawer liable?

64. Where should an instrument be presented which states no place of payment?

65. Suppose the maker of a note writes before maturity: "It is no use to present that note, I shall not pay it." Is the endorser liable without presentment being made to the maker?

66. After maturity of a negotiable instrument a discharged endorser promises the holder to waive the lack of diligence in discharging him. Is he thereupon liable?

67. Before maturity an endorser says to the holder: "You need make no presentment of that note to the maker at maturity; I waive the presentment." No presentment was made, the note was unpaid and no notice of its non-payment was sent to the endorser. Is the endorser discharged?

68. The maker of an endorsed note absconded shortly before maturity thereby excusing presentment. No notice of the failure to pay the instru-

ment at maturity was sent to the endorser. Is the endorser liable?

69. The holder of an endorsed note gives no notice of its dishonor but the last endorser notifies a prior endorser seasonably that the note was dishonored. What are the holder's rights against the endorsers?

70. An endorsed note is dishonored at maturity. The endorser though not notified by the holder knew that the note was dishonored immediately after the dishonor took place. Is the endorser liable to the holder?

71. Notice of the dishonor sent to an endorser by mail, properly addressed and stamped, fails to reach him through fault of the Post Office. Is the endorser charged?

72. Notice sent promptly by telegram, prepaid, properly addressed, failed to reach the endorser, through fault of the telegraph company. Is the endorser charged?

73. What is the latest time that notice of dishonor may be effectively sent to an indorser living in another city, when a note is dishonored on Thursday, December 24th?

74. Suppose a check is not presented promptly. When presented it is dishonored and notice is promptly sent to the drawer and indorsers. Are they liable?

75. What instruments must be protested in order to charge parties secondarily liable?

76. Why is it often advisable to protest instruments when protest is not required by the law?

77. A is a holder in due course of the third part of a set of foreign bills of exchange. B by a subsequent purchase is a holder in due course of the first part. The drawee refuses to pay either A or B and both A and B seasonably give notice of dishonor to the drawer. To whom is he liable?

78. When does the statute of limitations begin to run on a demand note?

79. When does the statute of limitations begin to run on a note dated August 1, 1913, payable in two months?

80. Suppose a note falls due at a bank and is not paid? May the bank refuse to honor the maker's checks though covered by sufficient deposits, and apply the deposit account to the payment of the note?

81. A owed two notes to a bank, one of which only was secured by collateral. The secured note fell due and being unpaid the bank sold the collateral, realizing a larger sum than the amount of the note. A then went into bankruptcy, the second note not yet being due. Can the bank hold the excess realized from sale of the collateral and credit it on the unsecured note?

82. Can a bank insist on a customer endorsing a check drawn on it, payable to cash?

83. A bank paid a forged check and in good faith charged it to its customer's account, returning

to him with his cancelled checks the forged check at the end of the month. The customer fails to discover the forgery for two years. Can he then successfully demand that the bank shall give him credit for the amount of it?

84. A forged check was cashed by a bank on which it was not drawn. Can it recover the payment?

85. A forged check was deposited in a bank on which it was not drawn and was collected by that bank from the drawee bank. What are the rights of the parties when the forgery is discovered soon afterwards?

86. A check made payable to two trustees was indorsed by one of them on behalf of himself and co-trustee. Should the drawee bank pay the check?

87. A check made payable to two persons who are partners was indorsed by one of them on behalf of himself and co-partner. Should the drawee bank pay the check?

88. Is the maker of a note who signed it when he was intoxicated liable upon it?

89. A forged signature on a note was shown to B and he was asked if the signature was his. He said it was, supposing this to be the fact. Later, on presentment of the note for payment, B discovers the forgery and refuses to pay the note. Under what circumstances, if any, would B be liable?

90. A depositor had an account in the First National Bank and also in the Fourth National Bank,

and checks on the two which were similar in appearance. By mistake a check drawn by him on the Fourth National Bank is presented to the First National Bank, paid and cancelled by it. What are the rights of the First National Bank?

91. A drawee bank pays a check after the bankruptcy of the depositor, in ignorance of the bankruptcy. What are its rights and liabilities?

92. A check is cashed by the bank on which it is drawn and later it is discovered that the drawer's account was insufficient to meet the payment. What are the rights of the bank?

93. A check is deposited in the bank on which it is drawn and is credited to the depositor's account. Later it is discovered that the drawer's account was insufficient to meet the check. What are the rights of the bank?

94. On the back of a note at the top are the words "Waiving demand and notice." Below are the names of several indorsers. Must presentment to the maker be made and notice sent to any or all of these indorsers necessary to charge them?

95. On a bill of exchange are written the words "protest waived." Is presentment and notice necessary to charge the drawer?

96. Suppose the maker of a note is dead when it matures. What would you do to charge indorsers?

97. Suppose the indorser of a note is dead at its maturity, what would you do to charge his estate?

98. A father gives a note for his son's debt and when called on to pay, refuses on the ground that he received no consideration for his signature. Is he liable?

99. Define a qualified indorsement.

100. Define an anomalous or irregular indorsement.

INSTRUCTIONS.—In City Chapter Classes the foregoing questions are to be used in connection with the respective subjects to which they apply. Correspondence Chapter students will submit answers to all of the foregoing questions at the same time.

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